

# VALLEY LAWYER

JULY 2019 • \$5

A Publication of the San Fernando Valley Bar Association

## 2019 Trustee Candidates



### Insurance Coverage: The False Swearing Clause

Earn MCLE Credit



2019 LOS ANGELES  
PRESS CLUB FINALIST  
"BEST IN-HOUSE/CORPORATE  
PUBLICATION"



Official Sponsors of the San Fernando Valley Bar Association

## KRYCLER ERVIN TAUBMAN & KAMINSKY

FULL SERVICE ACCOUNTING FIRM

CONTACT MICHAEL J. KRYCLER, CPA, FCA | SCOTT R. ERVIN, CPA

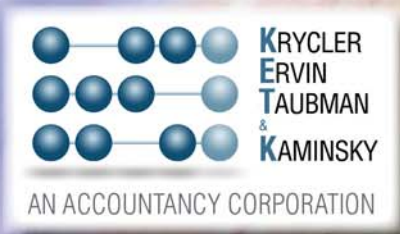
*When you need more than just numbers...  
you can count on us...*

- LITIGATION SUPPORT
- EXPERT WITNESS
- FORENSIC ACCOUNTANTS
- FAMILY LAW MATTERS
- BUSINESS VALUATIONS
- LOSS OF EARNINGS
- DAMAGES

MEMBERS OF  
American Institute of Certified Public Accountants  
California Society of Certified Public Accountants

15303 Ventura Boulevard, Suite 1040  
Sherman Oaks, California 91403

info@ketkcpa.com  
t: 818.995.1040  
f: 818.995.4124  
www.ketkcpa.com



# INNOVATION COMES STANDARD

FASTCASE IS ONE OF THE PLANET'S MOST  
INNOVATIVE LEGAL RESEARCH SERVICES,  
AND IT'S AVAILABLE FREE TO MEMBERS OF  
THE SAN FERNANDO VALLEY BAR ASSOCIATION.

LEARN MORE AT  
[WWW.SFVBA.ORG](http://WWW.SFVBA.ORG)





## Our Family Law Practice Group:

*over 30 years of service in Southern California*



**Vanessa Soto Nellis\***  
Chair, Shareholder



**Lynn Soodik**  
Shareholder



**Melissa L. Mayer\***  
Senior Associate



**Susan T. Goldstein**  
Of Counsel

\*Certified Specialist in Family Law, State Bar of California Board of Legal Specialization



**LEWITT HACKMAN**

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION

16633 Ventura Boulevard, 11th Floor  
Encino, California 91436-1865

lewitthackman.com  
818.990.2120





12



22



30



34

The Los Angeles Press Club has named *Valley Lawyer* as one of five Finalists for its prestigious 2019 Best In-House or Corporate Publication Award. There were more than 1,200 entries in all categories for this year's competition. *Valley Lawyer* was the recipient of the same award in 2014 and placed third in that same category in 2016.

### FEATURES

#### 12 Insurance Coverage:

The False Swearing Clause | BY BRUCE M. WARREN  
MCLE TEST NO. 129 ON PAGE 19.

#### 22 2019 Trustee Candidates | BY MICHAEL D. WHITE

#### 30 Weapons of Mass Destruction | BY ILENE B. FLETCHER

#### 34 Colliding Apps: Analyzing Ride-Hailing and Scooter Share Services Injury Laws | BY ANDREW L. SHAPIRO

### DEPARTMENTS

#### 7 President's Message

#### 9 Editor's Desk

#### 10 Event Calendar

#### 11 Executive Director's Desk

#### 33 Member Focus

#### 38 New Members

#### 38 Nominating Committee Report

#### 39 Photo Gallery

#### 41 Attorney Referral Service

#### 43 Valley Community Legal Foundation

#### 45 Santa Clarita Valley Bar Association

#### 46 Classifieds



## Jack G. Cohen

COURT QUALIFIED AUTOMOBILE  
EXPERT WITNESS, LICENSED  
AUTOMOBILE DEALER

*30 years experience in the automotive industry*

- Plaintiff and Defense
- Consulting with attorneys, dealers, consumers, insurance companies

**OFFICE: 747.222.1550 « CELL: 747.222.1554**

**EMAIL: jack@coheninv.com**

2629 Townsgate Road, Suite 110 « Westlake Village, CA 91361

- Appraisals
- Industry standards
- Dealer fraud
- Vehicle sales and leasing
- Dealership practices
- New and used auto transactions
- Auto warranty issues
- Finance documentation and analysis
- Lender-dealer relationships
- Wholesale & Retail
- Diminished value cases
- Automobile and equipment rentals

# VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION

20750 Ventura Boulevard, Suite 140

Woodland Hills, CA 91364

Phone (818) 227-0490

Fax (818) 227-0499

www.sfvba.org

## EDITOR

Michael D. White

## EDITORIAL COMMITTEE CHAIR

David Gurnick

## GRAPHIC DESIGNER

Marina Senderov

## BOARD OF TRUSTEES

President.....Yi Sun Kim  
President-Elect.....Barry P. Goldberg  
Secretary.....David G. Jones  
Treasurer.....Christopher P. Warne  
Past President.....Alan E. Kassan  
Executive Director.....Rosie Soto Cohen

## TRUSTEES

Matthew A. Breddan	Samuel R.W. Price
Kyle M. Ellis	Allan D. Sarver
Heather Glick-Atalla	George N. Seide
Gary J. Goodstein	Steven M. Sepassi
Peta-Gay Gordon	Benjamin E. Soffer
Alexander J. Harwin	Toni Vargas
Alexander S. Kasendorf	Taylor F. Williams
Amanda Marie Moghaddam	

## STAFF

Director of Education & Events .... Linda Temkin  
Communications Manager..... Michael D. White  
Member Services Coordinator... Sonia Bernal  
Referral Consultant ..... Miguel Villatoro  
Referral Consultant ..... Favi Gonzalez

## SECTION CHAIRS

Bankruptcy Law ..... Steven R. Fox  
Business Law & Real Property ..... Lauri Shahar  
Criminal Law..... David S. Kestenbaum  
Employment Law ..... Kimberly Westmoreland  
..... David G. Jones  
Family Law ..... Sandra Etue  
..... Amir Aharonov  
Litigation ..... Christopher P. Warne  
New Lawyers ..... Yi Sun Kim  
..... Amanda Marie  
..... Moghaddam  
Probate & Estate Planning..... John E. Rogers  
..... Nancy A. Reinhardt  
Taxation Law..... Hrach J. Karakachian  
Workers' Compensation..... Jeffrey S. Swartz

Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

© 2019 San Fernando Valley Bar Association

**SOUTHERN CALIFORNIA'S  
PREEMINENT PROFESSIONAL  
LIABILITY DEFENSE FIRM**

**NEMECEK·COLE**  
Attorneys At Law



FRANK W. NEMECEK\*

JONATHAN B. COLE\*

MICHAEL MCCARTHY\*

\* Certified Specialist, Legal Malpractice Law, The State Bar of California Board of Legal Specialization

16255 VENTURA BOULEVARD, SUITE 300

ENCINO, CA 91436-2300

TEL: 818.788.9500 / TOLL FREE: 877.314.1177

WWW.NEMECEK-COLE.COM

## Service and Commitment

**I**N THIS ISSUE OF *VALLEY LAWYER*, we introduce you to the candidates vying for a position on our Board of Trustees.

We have an exceptional group from diverse practices areas and experiences. Each has already approached this opportunity with such enthusiasm and unique ideas in tow.

Many have asked what it is like to be on the Board, the time and effort demanded of them, and the duties they are expected to assume. The application states the basic requirements, such as attendance at the Board Retreat, monthly meetings, and events including our annual Judges' Night and the Installation Gala on October 3 (Save the Date!), as well as supporting and promoting the SFVBA's mission and programs.

I would also lend two points of advice to any potential Trustee. First, do not be afraid to participate and voice your concerns, opinions or suggestions. I spent my first year quietly listening from the back and observing the other members of the Board. I felt I did not have enough historical knowledge of prior discussions and actions taken, or institutional knowledge of what we are authorized to do under our Bylaws and State Bar Rules.

Other new Trustees said they felt the same way; they were hesitant to speak up or were unsure if what they had to say would be a valid contribution.

But, the very reason we have new Trustees is to benefit from their fresh perspective, be challenged with questions or ideas the prior group may not have considered, and continue to be a dynamic, evolving organization. All contributions are valid, crucial, and exactly

why the members vote individuals onto the Board in the first place.

Being a Trustee is a volunteer position, and Trustees will only be effective if they believe in the work that they do and find this volunteer work worthwhile. SFVBA members have different priorities as to what they get from their membership—whether it is MCLE meetings, networking opportunities, community service or outreach, or the Attorney Referral Service. The Board of Trustees should reflect those varying priorities.

My second point, therefore, is for potential Trustees to think about why they chose to be a member, what engages them, and how they can implement their particular skills and interests.

**YI SUN KIM**  
SFVBA President



[ykim@gblawllp.com](mailto:ykim@gblawllp.com)

One does not have to commit to all of the SFVBA's programs (that would be impossible). Find a committee or program that fits, or create one if it does not already exist, and have fun with it. There will be several members who share similar needs or objectives, and will derive more from their membership by sharing ideas and goals.

Volunteering time and resources only works if one is actually invested in what they are doing and believe it to be beneficial—to the SFVBA, the members, and you as well. Your opinions and ideas matter, and if you share them, especially with our latest slate of Trustee candidates, SFVBA is in for a landmark year. 🏛️



**Mondragon & Associates**  
Insurance Services

LAWYERS PROFESSIONAL LIABILITY  
EMPLOYMENT PRACTICES LIABILITY  
COMMERCIAL/PERSONAL INSURANCE  
CYBER LIABILITY  
EMPLOYEE BENEFITS

*Contact us now to ensure that you are receiving  
the best coverage for the lowest premium.*

SERVING ALL OF CALIFORNIA  
(818)-351-5000  
(LICENSE NO. 0L38536)



*Debra Mondragon*



*Michelle Mitchikoff*

**(818)351-5308**  
[DEBRA@MONDRAGONINS.COM](mailto:DEBRA@MONDRAGONINS.COM)

**(818)351-5388**  
[MICHELLE@MONDRAGONINS.COM](mailto:MICHELLE@MONDRAGONINS.COM)



# Aronsohn & So

## Real Estate Professionals



Probate and Trust Sale Experts



Lori Aronsohn

818.516.9218

Larealty@me.com

#01910398



[www.asprobater Realty.com](http://www.asprobater Realty.com)

*Los Angeles & Environs*

Patricia So

818.601.5455

Info@patriciaso.com

#01916870



## Sometimes numbers are the only prints left behind.

Arxis Financial is a proven forensic accounting and litigation specialist. We will examine the financial data and help you determine the "bottom line." Arxis provides financial and valuation analysis needed to resolve a variety of legal disputes from family court to civil, criminal, and probate courts. In many cases our experts can help you reach a settlement. If trial or arbitration is required we give you the support you need to win.

Chris Hamilton, CPA, CFE, CVA

805.306.7890

[www.arxisfinancial.com](http://www.arxisfinancial.com)

[chamilton@arxisgroup.com](mailto:chamilton@arxisgroup.com)

ARXIS  
FINANCIAL, INC.

FORENSIC ACCOUNTING

BUSINESS VALUATION

FRAUD ANALYSIS



## It's That Time

**W**ELL, FOLKS, THE shopworn calendar on the old clubhouse wall tells us that the official 2018-2019 SFVBA fiscal year is getting closer to an end and it is time to render due consideration to those stalwarts who have 'thrown their hats into the ring' in a bid for a seat on the SFVBA's Board of Trustees.

This year, 11 talented and dedicated attorneys are running to fill a total of eight seats on the Board. Your participation in voting to see who will fill six of those seats is of the same critical importance to the Bar and its work as our membership itself.

Why? It is important that you exercise your franchise because the SFVBA is important, not only to the attorneys who practice in the Valley, but to the citizenry at large that depends upon it to promote the community's well-being and help provide access to much-needed legal services, particularly those who can least afford it.

Please take some time to give the roster a good going-over and place your stamp on what the Bar accomplishes during the coming year and what course it will take into the future.

The actual election begins next month when attorney members will be able to cast votes electronically.

A side note: It was often very

entertaining working with the Trustee candidates to learn about where they have been and what they have accomplished during their careers. One candidate, when asked how he chose his particular area of legal practice, personal injury law, he wrote, "I just fell into it."

Did you hear a distant rimshot? I did.

This month's *Valley Lawyer* has more than its usual quota of great writing and useful information.

Attorney Andrew L. Shapiro's piece on Uber/Lyft liability is timely and well-crafted, and addresses questions of growing concern

as commuters seek more convenient ways to get from here to there.

Ilene Fletcher presents a sobering perspective on the impact of the often heart-wrenching

circumstances surrounding child custody, while Bruce Warren's scores with his MCLE article on false insurance claims and the viability of the False Swearing Clause.

We are also happy to introduce Favi Gonzalez, our new Attorney Referral Service Consultant. Favi is a bilingual paralegal, fluent in English and Spanish, who is completing her undergraduate degree at California State University, Northridge with an eye on attending law school and is a welcome addition to our staff.

Enjoy and regards. 🏠

**MICHAEL D. WHITE**  
SFVBA Editor



[michael@sfvba.org](mailto:michael@sfvba.org)



### PERSONAL INJURY PRACTICE GROUP

*(nearly 40 years of service in the Valley)*



**ANDREW L. SHAPIRO**  
Chair & Shareholder  
[ashapiro@lewitthackman.com](mailto:ashapiro@lewitthackman.com)



**THOMAS CECIL**  
Shareholder  
[tcecil@lewitthackman.com](mailto:tcecil@lewitthackman.com)



**DAVID B. BOBROSKY**  
Shareholder  
[dbobrosky@lewitthackman.com](mailto:dbobrosky@lewitthackman.com)

[lewitthackman.com](http://lewitthackman.com)  
(818) 990-2120



**LEWITT HACKMAN**

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION

Referral fees subject to California Bar rules.

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	  4	5	6
7	8	Board of Trustees <b>6:00 PM</b> <b>SFVBA OFFICES</b> 9	10		11	12 13
14	 15	16	17	 18	19	20
21	22	23	24	 25	26	27
28	Probate and Estate Planning Section Dinner <b>6:00 PM</b> <b>SFVBA OFFICES</b> See ad on page 18           29	30	31			

## SAN FERNANDO VALLEY BAR ASSOCIATION AND VALLEY COMMUNITY LEGAL FOUNDATION

# INSTALLATION GALA PARTY UNDER THE STARS

THURSDAY, OCTOBER 3, 2019

5:30 PM – 8:30 PM

SKIRBALL CULTURAL CENTER

GOURMET BUFFET

ENTERTAINMENT PROVIDED BY THE SINGERS IN LAW

Contact Linda Temkin at [events@sfvba.org](mailto:events@sfvba.org) or (818) 227-0495 to purchase tickets and sponsorships.



The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit [www.sfvba.org](http://www.sfvba.org) for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or [events@sfvba.org](mailto:events@sfvba.org). Pricing discounted for active SFVBA members and early registration.



## Emerging Approaches and Leadership

**T**HE SFVBA HOSTED AN exciting Membership Appreciation Celebration and Art Show experience last month. It was a rare opportunity for members to dine and network outdoors in the SFVBA complex courtyard and for many, tour the new Bar offices for the first time.

The event included delicious handmade tacos and quesadillas, fantastic raffle prizes, goodie bags, wine and beer, and socializing, followed by introductions of the 2019 SFVBA Trustee Candidates.

Each candidate, uniquely qualified, was enthused to participate and campaign for votes. One by one, they each went before the crowd, put themselves out there and vied for your vote and opportunity to serve in a formal capacity for the betterment of the Bar.

A highlight of the evening was the art show, organized by Morgan Halford. Displaying their creations were attorney and Past President Alan Kassan, attorneys Robert Carlson, Katherine Wolf and Morgan Halford, and award-winning courtroom artist, Steve Werblum.

What's next? This summer, in response to your requests, expect two great programs.

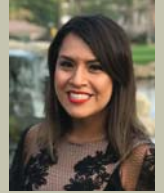
First, a Summer Party at the Woodland Hills Country Club that is free to our attorney members. Christopher Warne, the Board and SFVBA Section Chairs have been hard at work to ensure members have a great time at this event.

Second, an exclusive and special Probate Section dinner, hosted by the Bar and sponsored by Larry Weiner with Flans & Weiner, Paul Hargraves with Trust Properties, Robert Graf with Re/Max and Margarita Billings with Flagship Escrow and Settlement Services. This event has

come to fruition, thanks to the vision of Probate Section Chair, Nancy Reinhardt.

These are two events that you do not want to miss. Space is limited, so sign up now.

**ROSIE SOTO COHEN**  
Executive Director



[rosie@sfvba.org](mailto:rosie@sfvba.org)

Thank you for being an SFVBA member. We are only as strong as our member support. 🏠

**RE/MAX**  
OLSON & ASSOCIATES

**Robert Graf**

DRE# 01469117

- Will provide all vendors necessary to prepare any property for sale.
- Attorney references provided upon request.
- Serving greater Los Angeles, Ventura, and Orange County areas.



PROBATE . TRUST . STANDARD SALES

O: 818.368.6265 | M: 818.399.9455 | E: bob@RobertGraf.com  
[www.RobertGraf.com](http://www.RobertGraf.com) | 11141 Tampa Ave., Porter Ranch, CA 91326

# MSM

**Moon, Schwartz & Madden**

## COURT QUALIFIED EXPERT WITNESS

Actuarial Valuation of Retirement Plan Benefits Including Survivor Benefits



**Matthew H. Schwartz**  
PARTNER



**John C. Madden**  
PARTNER

- Moon, Schwartz & Madden is the leading provider of actuarial community property valuations for defined benefit plans (including survivor benefits), and defined contribution plan tracings in Northern CA.
- We are qualified as experts in the valuation and division of public, private, federal, military, qualified and non-qualified retirement plans.
- Additional services include income stream estimates, review of opposing expert reports, review of plan calculations, QDRO review and more!
- Need to trade off other marital assets or debts against the pension? Need to know the actuarial present day value of lost survivor benefits? No problem, just call MSM!

17901 Von Karman Avenue ■ Suite 600 ■ Irvine CA 92614

(714) 430-8984 ■ [www.msmqdro.com](http://www.msmqdro.com)

**WE ARE PLEASED TO ANNOUNCE THE OPENING OF OUR NEW OFFICE IN IRVINE!**



By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 19.

# Insurance Coverage: The False Swearing Clause

By Bruce M. Warren

---

Before taking a case in which an insurer has denied a claim based on the false swearing clause, a practitioner should seriously consider that the insurer may well be correct. Insureds are often tempted to inflate a claim to account for a deductible or an insurer's application of a depreciation factor.

---







**T**HE FIRST LINE OF THE SPECIAL INVESTIGATIONS Unit (“SIU”) manual of a major insurance company once read: “It has been said that insurance fraud ranks second only to tax evasion as the most prevalent white-collar crime.” Regrettably, this seems to be the way insurers view far too many claims.

Consistent with this view, insurers seem to have increased the frequency with which they deny suspicious claims.

Interestingly, rather than establishing the claims are actually fraudulent, e.g., that the car was not actually stolen, the insurers rely on peripheral, alleged misrepresentations by the insureds, e.g., that at the time of the theft the insured was in a grocery store, when, in fact, the insured was in a neighboring liquor store, as the grounds for denying the claims. This article addresses the law relative to this phenomenon.

### **False Swearing Clause**

The California Insurance Code, § 2071, which defines the standard form for fire insurance policies in California, includes a provision stating: “Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.”

This clause is often referred to as the false swearing clause. Homeowners’ insurance policies, which typically include coverage for fire, contain this language, while automobile insurance policies also include similar language.

Policy provisions which are established by statute are entitled to the liberal construction reserved for the interpretation of statutes, rather than the strict construction normally applicable to insurance policy interpretation.<sup>1</sup>

The rationale behind this principle lies in the fact the provision is required by statute and is a matter beyond the control of either the insurance company or the policyholder.<sup>2</sup>

The courts have not hesitated, in appropriate cases, to enforce the false swearing clause.

In *Cummings v. Fire Ins. Exch.*, the insured made a claim for vandalism damage to her home and its contents. The insurer made payments, but received information which suggested the claim might have been fraudulent and had interviewed the insured who stated she had left her home in the morning and returned in the evening to discover the damage.

She said no one was home when she left, she lived alone, and she had no idea who caused the damage. The insurer then took her examination under oath. The insured initially repeated this version of what happened. However, when confronted with information the insurer had obtained from her neighbors, she changed her story and gave a true accounting of what had happened: her son caused the damage in a fit of anger while she was present.

Based upon this, the insurer refused to make further payments. The insured sued for “bad faith.” However, the court granted the insurer’s motion for summary judgment based upon the false swearing clause.

On appeal, the insured argued it was for a jury to decide whether her misrepresentation was material. The court rejected this argument because materiality could be determined as a matter of law if reasonable minds could not disagree and under the circumstances, they could not.<sup>3</sup>

In *Hodjat v. State Farm Mut. Auto. Ins. Co.*, the insureds made a claim after the insured car was stolen. The insurer denied the claim, relying on the false swearing clause after the insureds repeatedly made inconsistent statements about the car. In the ensuing litigation, the court granted the insurer’s motion for summary judgment.

In affirming, the court addressed the insureds’ inconsistent statements, finding that Hodjat first told State Farm that he purchased the BMW for \$65,000 when he reported the loss. In the affidavit of loss, however, the Hodjats stated they purchased the BMW for \$28,000 from Manheim Auto Auctions in Riverside.

In a recorded statement less than a month later, Hodjat claimed they paid between \$26,000 and \$27,000. Meanwhile, the title documents for the car showed a sale price of \$25,000 to \$25,199.

Hodjat’s description of the condition of the car when he bought it also changed dramatically during the course of the investigation. In the recorded statement, he told State Farm that the car was drivable at the time he purchased it, but later he stated that it was not drivable and had to be towed to his business.

He also made inconsistent statements regarding how much it cost to repair the BMW, providing estimates ranging from \$1,800 to \$5,040 to \$8,000 during the course of the investigation. Hodjat’s description of when he last saw the BMW and when he discovered it missing also changed each time he spoke with State Farm and the police.

“Every detail of the Hodjats’ claim—from the condition of the car to the cost of the repairs to the discovery of the theft—was riddled with inconsistencies,” the court said.<sup>4</sup>

**Bruce M. Warren** focuses on insurance coverage and bad faith consultation and litigation. He can be reached at [bruce@sendlgm.com](mailto:bruce@sendlgm.com).





# LAWPAY IS FIVE STAR!



LawPay has been an essential partner in our firm's growth over the past few years. I have reviewed several other merchant processors and no one comes close to the ease of use, quality customer receipts, outstanding customer service and competitive pricing like LawPay has.

— Law Office of Robert David Malove

Trusted by more than 35,000 firms and verified '5-Star' rating on Trustpilot

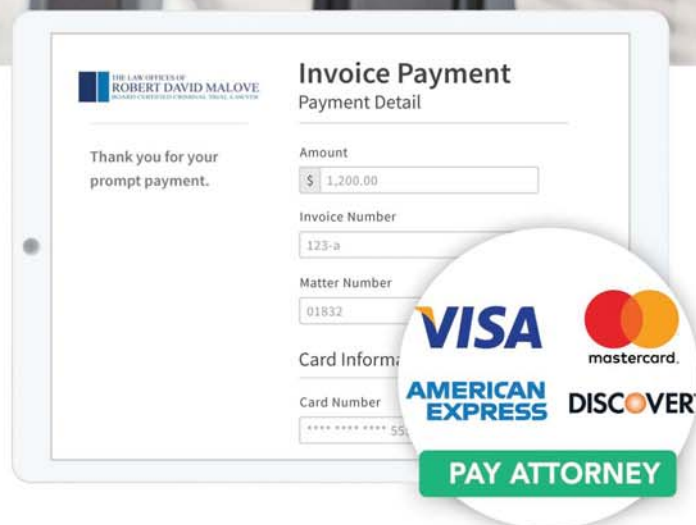
## LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

### THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

866-751-8288 or visit [lawpay.com/sfvba](http://lawpay.com/sfvba)



LawPay is proud to be a vetted and approved Member Benefit of the San Fernando Valley Bar Association.



Special offer for bar members.  
**Call for details**

Based on this, it ruled that, “No reasonable jury could find in favor of the Hodjats on State Farm’s defense of material misrepresentations.”<sup>5</sup>

### Where There’s Smoke

In *Watts v. Farmers Ins. Exch.*, the insurer denied the insureds’ claim for damage resulting from a fire. In the ensuing litigation, the insurer obtained summary judgment by establishing Mrs. Watts violated the policy’s false swearing clause by giving what were demonstrably false answers to questions posed by its investigators that concerned previous fires.

In addition, she had submitted a claim for personal property which included numerous items damaged or destroyed in a prior fire and which conflicted with a written claim she had made in connection with the fire then under investigation.<sup>6</sup>

The court affirmed as to Mrs. Watts, but reversed as to Mr. Watts because the insurer had not established Mr. Watts was complicit in his wife’s misrepresentations.

While the courts are not hesitant to enforce the false swearing clause when there is demonstrable evidence of misrepresentations, insurers must prove there were misrepresentations or concealments, that they were material, and that they were knowingly or willfully made.

“An insured can pursue a breach of contract theory against its insurer by alleging the insurance contract, the insured’s performance or excuse for nonperformance, the insurer’s breach, and resulting damages.”<sup>7</sup>

Since the false swearing clause is an exclusionary clause, it must be asserted as an affirmative defense, and it is something on which the insurer has the burden of proof.<sup>8</sup>

Thus, in *Watts, supra*, the court reversed the summary judgment against Mr. Watts because the insurer had not established he had misrepresented anything or concealed anything.

According to the court, “This case raised the issues of...whether an innocent co-insured who holds property jointly with an insured who has committed fraud is automatically excluded from coverage. We hold that...under the wording of the policy in question and the California standard form fire insurance policy, an innocent co-insured may recover for his or her percentage share of the losses despite the transgressions of the other insured.”<sup>9</sup>

In *Barker v. Ameriprise Auto & Home Ins. Agency, Inc.*, the court considered an action in which the insured sued the insurer for having denied a fire loss claim.

The insurer moved for summary judgment based, in part, on its assertion that the undisputed facts established the insured made material misrepresentations when asked about a particular cell phone. The court rejected both the insurer’s assertion that what the insured told it was a misrepresentation and its assertion the whereabouts of the phone was even material.

In any event, the court said, “A rational trier-of-fact could find that the location of the cell phone was immaterial. Contrary to [the insurer’s] claim, Mr. Barker’s statement did not deny it the opportunity to look at Mr. Barker’s phone records. And, [the insurer] offers no evidence that Mr. Barker used the phone to perpetrate a fraud or lied about the phone’s location. Indeed, [the insurer] fails to explain the relevance of the phone at all.”<sup>10</sup>

Significantly, the court also rejected the insurer’s assertion the insured falsely represented that he had bought a particular camera at a Costco. Although the insurer produced evidence Costco had no record of the insured having bought the camera there, the court stated that, “the absence of a record at Costco does not necessarily compel the conclusion that an item was never purchased.”<sup>11</sup>

And, “assuming the evidence in the light most favorable to Mr. Barker, Mr. Barker may have simply made a mistake of fact about the location of his purchase. Whether Mr. Barker knew his testimony about the purchase place of the camera was false is a question for the jury.”<sup>12</sup>

### Suspicion of Misrepresentation

*McCoy v. Progressive West Ins. Co.* provides a perfect illustration of difference between what happens when an

**CISLO & THOMAS LLP®**  
Patent, Copyright and Trademark  
Litigation Attorneys at Law

**Successfully Won or Settled  
98% of Our Cases**

“We have the best Intellectual Property  
Attorneys in Southern California,  
who litigate and protect IP.”

**Daniel M. Cislo, Esq.,  
Managing Partner**

**Serving Businesses in California Since 1979**

Office Locations:  
West Los Angeles/Santa Monica  
Westlake Village  
Santa Barbara  
Pasadena  
San Diego

www.cisloandthomas.com | (310) 979-9190



insurer suspects the insured has made misrepresentations and what happens when it has proof.<sup>13</sup>

There, the insured's automobile was stolen and destroyed. The insurer suspected the insured was complicit in the loss and even had some evidence, including a statement from the insured's ex-wife, to that effect. The insurer was not able to prove the insured was complicit and a jury found the insurer acted in bad faith in denying the insured's claim, awarding both compensatory and punitive damages. The court affirmed and expressly rejected the insurer's argument there was a "genuine dispute" over the legitimacy of the claim.

When an insurer suspects the insured has made misrepresentations, but does not have proof, the California Supreme Court's reasoning in *Wilson v. 21st Century Ins. Co.* is enlightening.<sup>14</sup>

There, the court discussed the application of the implied covenant of good faith and fair dealing in connection with an insurer's motion for summary judgment in an action based on its delay in paying underinsured motorist benefits.

In that particular case, the insured was injured in an automobile accident and made a claim under the underinsured motorist coverage of her policy.

The insurer made what the insured considered an unsatisfactory settlement offer based on its conclusion she sustained only minor injuries, but eventually offered its full policy limits. The insured sued the insurer for unreasonably delaying payment. The trial court granted the insurer's motion for summary judgment, which was based on the insurer's assertion there was a "genuine dispute" over the value of the insured's injuries. The Court of Appeal reversed and the Supreme Court of the U.S. affirmed.

Of particular note, the Court stated that "21st Century, of course, was not obliged to accept [the insured's doctor's] opinion [as to the extent of her injuries] without scrutiny or investigation. To the extent it had good faith doubts, the insurer would have been within its rights to investigate the basis for [the insured's] claim by asking [her doctor] to reexamine or further explain his findings, having a physician review all the submitted medical records and offer an opinion, or, if necessary, having its insured examined by other physicians (as it later did)."

What it could not do, the Court said, "was ignore [the insured's doctor's] conclusions without any attempt at adequate investigation, and reach contrary conclusions lacking any discernable medical foundation. A jury could reasonably find 21st Century did so here."<sup>15</sup>

One could reasonably envision a court, considering a claim that was denied based on an alleged misrepresentation, stating that, "The insurer was not obliged to pay the claim without scrutiny or investigation. To the extent it had good faith doubts about whether the insured knowingly made material misrepresentations, the insurer would have been within its rights to investigate. Indeed, it had a duty to fully, fairly and



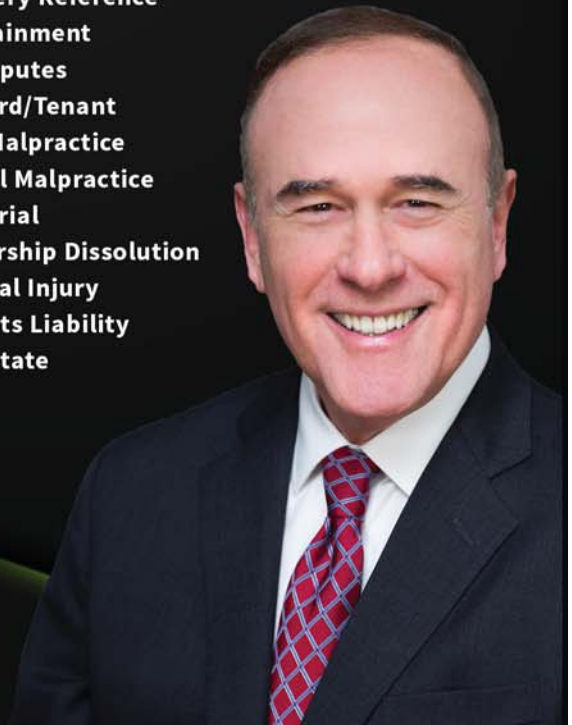
**ADR Services, Inc. Proudly Welcomes**

**Hon. Gerald  
Rosenberg (Ret.)**

**Mediator • Arbitrator • Referee**

**AREAS OF SPECIALIZATION**

- Arbitration
- Commercial Contract/General Business
- Discovery Reference
- Entertainment
- Fee Disputes
- Landlord/Tenant
- Legal Malpractice
- Medical Malpractice
- Mock Trial
- Partnership Dissolution
- Personal Injury
- Products Liability
- Real Estate



**For scheduling, please contact Chelsea Mangel  
at [chelsea@adrservices.com](mailto:chelsea@adrservices.com)**

**[www.JudgeRosenberg.com](http://www.JudgeRosenberg.com)**

**(310) 201-0010**

thoroughly investigate. What it could not do, consistent with the implied covenant of good faith and fair dealing, was deny the claim based just on its suspicions.”

It is unlikely a court would look favorably upon an insurer that denied a claim based just on its suspicion that the insured made material misrepresentations with the expectation that the court would sort it out.

While it is true that if a claim is not covered, an insurer cannot be liable for “bad faith” despite having done an inadequate investigation,<sup>16</sup> if the claim is covered, then the question of liability for “bad faith” turns on the reasonableness of the insurer’s investigation and decision to deny the claim.

Thus, in *Maslo v. Ameriprise Auto and Home Ins.*, the court held that even though the policy called for arbitration when they could not agree the amount due on an uninsured motorist claim, the insurer could still be liable for “bad faith” if it just demanded arbitration without having fairly investigated, evaluated and processed the claim.<sup>17</sup>

### Intelligent and Critical Consideration

Before denying claims based on the false swearing clause, insurers should intelligently and critically consider whether they are relying on gut instinct or can actually prove the insured knowingly misrepresented or concealed material facts.

Insurers should be sensitive to whether an insured may have misunderstood a question.


For example, financial need is a prime motive for filing a fraudulent claim, so insurers often ask their clients if they owe money. Many, if not most, people think “owing money” as being behind in making credit card or auto loan payments and automatically answer in the negative.

However, the reality is that if they have a mortgage, a car payment or a credit card, they do owe money. Thus, before deeming the answer to be a material misrepresentation, an insurer should consider whether the insured understood the question being asked.

An insurer should also consider whether, in the event of litigation, it will need to conduct discovery to establish the insured knowingly made a material misrepresentation. If it will need to conduct discovery, then the insurer should be concerned it has not conducted an investigation sufficient to warrant a denial of the claim. Indeed, an insured in an action for “bad faith” might successfully argue that if the insurer cannot win a motion for summary judgment or summary adjudication with the evidence it had at the time of the denial, its denial was unreasonable and an act of “bad faith.”

Before taking a case in which an insurer has denied a claim based on the false swearing clause, a practitioner should seriously consider that the insurer may well be correct. Insureds are often tempted to “inflate” a claim to account for a deductible or an insurer’s application of a depreciation factor. Thus, the insurer often is right about the insured knowingly misrepresenting facts regarding a loss.

As a result, a practitioner should intelligently and critically consider whether the prospective client, after being caught in a lie by the insurer, is telling a second lie in hopes of salvaging the claim. After all, once the insurer has denied the claim, the insured has little more to lose by suing, and if they can get an attorney to take the case, they might get some sort of a settlement.

Of course, if the insurer proves it was right in denying the claim, it is only the attorney who loses. 

SAN FERNANDO VALLEY BAR ASSOCIATION
FREE

## PROBATE & ESTATE PLANNING SECTION

# Dinner & One Hour Legal Ethics Seminar

## MONDAY, JULY 29

### 6:00 PM • SFVBA OFFICES

### Stay Out of That Chair!

Tips for the Estate Planning Professional Today  
to Avoid Ending Up in the Witness Box Tomorrow

**Speakers:** Scott E. Rahn and Nicholas Van Brunt

Limited Seating  
Don't Miss this Special Dinner  
RSVP ASAP to [events@sfvba.org](mailto:events@sfvba.org)



**FREE TO PROBATE AND ESTATE  
PLANNING SECTION MEMBERS ONLY!**

**DINNER SPONSORED BY**  
Flans & Weiner: Larry Weiner  
Trust Properties USA: Paul Hargraves  
Re/Max, Olson & Associates: Robert Graf

**DESSERT SPONSORED BY**  
Flagship Escrow and Settlement Services: Margarita Billings

<sup>1</sup> *Prudential-LMI Commercial Ins. v. Superior Court* (1990) 51 Cal.3d 674, 683-684; *Ichthys v. Guarantee Ins. Co.* (1967) 249 Cal.App.2d 555, 558; *Ohran v. National Auto. Ins. Co.* (1947) 82 Cal.App.2d 636, 648.

<sup>2</sup> *Id.*

<sup>3</sup> *Cummings v. Fire Ins. Exch.* (1988) 202 Cal.App.3d 1407, 1417.

<sup>4</sup> *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 11 – 12.

<sup>5</sup> *Id.* at 12.

<sup>6</sup> *Watts v. Farmers Ins. Exch.* (2002) 98 Cal.App.4th 1246.

<sup>7</sup> *San Diego Housing Com. v. Industrial Indem. Co.* (1998) 68 Cal.App.4th 526, 536.

<sup>8</sup> *Royal Globe Ins. Co. v. Whitaker* (1986) 181 Cal.App.3d 532, 537.

<sup>9</sup> *Watts v. Farmers Ins. Exch.* (2002) 98 Cal.App.4th 1246, 1246.

<sup>10</sup> *Barker v. Ameriprise Auto & Home Ins. Agency, Inc.* (W.D.Wa 2012) 905 F.Supp.2d 1214, 1220.

<sup>11</sup> *Id.* at 1221.

<sup>12</sup> *Id.*

<sup>13</sup> *McCoy v. Progressive West Ins. Co.* (2009) 171 Cal.App.4th 785.

<sup>14</sup> *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713.

<sup>15</sup> *Id.* at 713, 722.

<sup>16</sup> *Murray v. State Farm Fire & Casualty Co.* (1990) 219 Cal.App.3d 58.

<sup>17</sup> *Maslo v. Ameriprise Auto and Home Ins.* (2014) 227 Cal.App.4th 626.





# Test No. 129

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The provisions in Insurance Code, § 2071 must be included every fire insurance policy issued in California.  
☐ True ☐ False
2. Unlike other policy exclusions, the false swearing clause should be liberally construed.  
☐ True ☐ False
3. If an insured tells the insurer about how a loss happened and a witness tells the insurer another version, the insurer is justified in denying the claim.  
☐ True ☐ False
4. If an insurer can prove an insured made a misrepresentation, then it is justified in denying the insured's claim.  
☐ True ☐ False
5. The false swearing clause is not an exclusionary clause, so there is no need for it to be asserted as an affirmative defense.  
☐ True ☐ False
6. Insurance policy provisions which are established by statute are entitled to the liberal construction reserved for the interpretation of statutes.  
☐ True ☐ False
7. Policy provisions which are established by statute are entitled to the liberal construction reserved for the interpretation of statutes, rather than the strict construction normally applicable to insurance policy interpretation.  
☐ True ☐ False
8. If an insured knowingly overstates the number of pieces of jewelry taken in a burglary, the insurer can refuse to pay for any jewelry, but must still pay for other things that were actually taken.  
☐ True ☐ False
9. Because of the duties imposed by the implied covenant of good faith and fair dealing, an insurer must be able to prove by a preponderance of the evidence an insured knowingly made material misrepresentation or concealed a material fact to justify denying a claim.  
☐ True ☐ False
10. If an insurer strongly suspects the insured has made material misrepresentations regarding a claim, it may deny the claim and, if the insured challenges the denial, let the court sort it out.  
☐ True ☐ False
11. If an insurer proves the insured knowingly made material misrepresentations regarding a loss, it cannot be held liable for "bad faith."  
☐ True ☐ False
12. Before denying claims based on the false swearing clause, insurers should rely on intuition or gut instinct to actually prove the insured knowingly misrepresented or concealed material facts.  
☐ True ☐ False
13. If an insured makes conflicting material statements about a loss, an insurer will be justified in denying the claim without anything more.  
☐ True ☐ False
14. An insurer should not assume that it can gather evidence in discovery to justify its denial of a claim based on the false swearing clause.  
☐ True ☐ False
15. If an insured lets a friend borrow his or her car, which is then damaged, and the friend lies to the insurer about how the damage happened, that does not necessarily establish the claim is barred.  
☐ True ☐ False
16. While the courts are not hesitant to enforce the false swearing clause when there is demonstrable evidence of misrepresentations, insurers are not required to prove there were misrepresentations or concealments, that they were material, and that they were knowingly or willfully made.  
☐ True ☐ False
17. In an action for breach of contract, based on the insurer's denial of a claim based on the false swearing clause, the burden of proving the insured's statements were true is on the insured.  
☐ True ☐ False
18. An insurer can still be liable for "bad faith" if it only demanded arbitration without having fairly investigated, evaluated and processed the claim.  
☐ True ☐ False
19. Before denying claims based on the false swearing clause, insurers should intelligently and critically consider whether they are relying on gut instinct or can actually prove the insured knowingly misrepresented or concealed material facts.  
☐ True ☐ False
20. Financial need is frequently a prime motive for filing a fraudulent claim, so insurers often ask their clients if they owe money.  
☐ True ☐ False

## MCLE Answer Sheet No. 129

### INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

San Fernando Valley Bar Association  
20750 Ventura Blvd., Suite 140  
Woodland Hills, CA 91364

### METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"  
☐ Please charge my credit card for \$\_\_\_\_\_.

Credit Card Number \_\_\_\_\_

CVV code \_\_\_\_\_

Exp. Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.

Name \_\_\_\_\_

Law Firm/Organization \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State/Zip \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_

State Bar No. \_\_\_\_\_

### ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

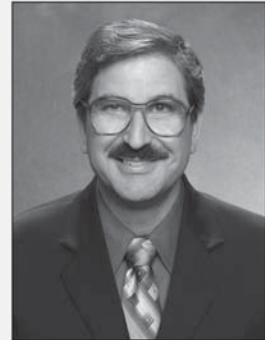
- |     |                               |                                |
|-----|-------------------------------|--------------------------------|
| 1.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 7.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 8.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 9.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 10. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 11. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 12. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 13. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 14. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 15. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 16. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

# When Bankruptcy May Be the Best Solution...

Choose an experienced & knowledgeable attorney who provides personal & timely attention and recommends bankruptcy only when it is the best solution.

**Law Offices of Steven R. Fox**  
Bankruptcy & Related Matters

Debtor and Creditor Representation  
Chapter 11 Reorganization  
Bankruptcy Litigation  
Developing and Rebuilding Companies



17835 Ventura Blvd., Suite 306  
Encino, CA 91316 ■ (818) 774-3545  
[SRFox@FoxLaw.com](mailto:SRFox@FoxLaw.com)



The Matloff Company has been a top insurance broker to Southern California attorneys, their firms and families for over 32 years.

**RATED A+ A.M.  
BEST INSURERS.**

## Life Insurance

Term, Universal Life, Survivorship, Estate Planning, Key-Person

## Disability Insurance

Insure your most important asset—"Your ability to earn income"  
Insures you in your own occupation  
Benefits keep up with inflation

## Long Term Care Insurance

Several quality carriers for individuals and firms

## Health Insurance

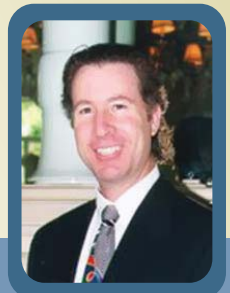
All major insurance companies for individuals & firms



**The Matloff Company**  
An Insurance and Financial Services Company

Phone: (800) 468-4467

E-mail: [elliott@matloffcompany.com](mailto:elliott@matloffcompany.com)



**Elliot Matloff**

[www.matloffcompany.com](http://www.matloffcompany.com)



SAN FERNANDO VALLEY BAR ASSOCIATION

# INAUGURAL *Summer* PARTY

MIX AND  
MINGLE

RAFFLE  
PRIZES

NETWORKING

MEET THE EXPERTS

THURSDAY  
– 18 JULY –

AT 6 PM

DINNER  
AND  
DRINKS

Woodland Hills Country Club

21150 Dumetz Road • Woodland Hills, CA 91364

Come mix and mingle at our first annual summer event. Meet expert witnesses from diverse practice areas who will be speaking at upcoming SFVBA MCLE Events.

Complimentary Dinner, Appetizers and Dessert  
Hosted Cocktail Bar

SFVBA Attorney Members – Complimentary  
SFVBA Non-Attorney Members – \$25

Discounted tickets available for Affiliate Bar Association Members

Supported by

## SPECIALTY SPONSORS



PHYSICAL THERAPY WEST

## TIER ONE SPONSORS



Edward Jones



## TIER TWO SPONSORS



CONSERVATIVE CARE  
SPECIALISTS MEDICAL GROUP, INC.



ITSUPPORTLA



White  
Zuckerman  
Warsavsky  
Luna  
Wolf  
Hunt  
LLP  
Certified Public Accountants

Contact [events@sfvba.org](mailto:events@sfvba.org) or call (818) 227-0495 for further details.



# 2019 Trustee Candidates

By Michael D. White

Next month, SFVBA attorney members will have the opportunity to elect a new Board of Trustees from among a slate of highly qualified and dedicated candidates. This month, we profile each Trustee candidate and give members the opportunity to gain some perspective into their individual goals and aspirations for the Bar over the coming year, as well as what makes each one particularly qualified to serve and lead.









## MICHAEL L. COHEN



**LAW SCHOOL:** San Fernando Valley College of Law

**AREA(S) OF PRACTICE:** Personal Injury

**YEARS IN PRACTICE:** 14

**SFVBA MEMBER SINCE:** 2004

**OFFICE LOCATION:** Calabasas

**WHY YOUR PARTICULAR AREA OF LEGAL PRACTICE?** “I just fell into it and have come to love it.”

**WHAT DO YOU DO IN YOUR FREE TIME?** “Sporting events, music festivals, and travel with our daughter.”

**WHAT WAS YOUR FIRST CAR?** “A Jeep Cherokee.”

**WHAT IS YOUR PROUDEST PROFESSIONAL MOMENT?** “Finding out I passed the Bar.”

Michael L. Cohen attended Moorpark College and California State University, Northridge before receiving his JD from the San Fernando Valley College of Law. He was admitted to the California State Bar in 2005 and to the U.S. District Courts for the Central, Northern, Eastern and Southern Districts of California.

A member of the Consumer Attorneys Association of Los Angeles, the Consumer Attorneys of California, and the American Association for Justice, Cohen has been an active participant in the SFVBA, taking part in its Law Day Lawyers in the Library, Blanket the Homeless, and annual Member Appreciation events.

In addition, he volunteered to answer one-on-one questions and review documents at the Bar’s Aliso Canyon Gas Leak Forum, attended past Judges’ Night dinners and Installation Galas, as well as participated in the Bar’s Membership and Marketing Committee.

“I enjoy participating in the many different community/public service events and I actively promote the SFVBA at those events,” he says. “I am organized, thoughtful and genuinely believe in the SFVBA and its mission statement.”

Cohen performed his law school clinical placement at the SFVBA’s Attorney Referral Service, becoming very familiar “with how that program operates.”

As a Bar Trustee, “I would love to help develop mutually beneficial relationships between the SFVBA and other organizations such as CAALA and LATLC. I think that these relationships could expose a new group of attorneys to the SFVBA and help increase our membership, event attendance and participation.”

## ALAN EISNER



**LAW SCHOOL:** Loyola Law School

**AREA(S) OF PRACTICE:** Criminal Defense

**YEARS IN PRACTICE:** 32

**SFVBA MEMBER SINCE:** 2000

**OFFICE LOCATION:** Van Nuys

**YOUR FAVORITE VALLEY RESTAURANT(S)?** “Kiwami Sushi in Studio City and Nat’s Early Bite in Canoga Park.”

**WHAT INFLUENCED YOU TO BECOME AN ATTORNEY?** “Wanting to advocate for the underdog.”

**WHY PRACTICE IN THE VALLEY?** “The Valley has been my home for years. It’s where my family lives and my kids are.”

**YOUR FAVORITE COUNTRY TO VISIT?** “The Czech Republic.”

Long active in SFVBA, Alan Eisner has been a participant and speaker at numerous Bar events including Judges’ Night and the SFVBA MCLE Marathon.

Eisner has practiced exclusively criminal defense in the San Fernando Valley community for over 30 years, is certified by the State Bar of California as a Specialist in Criminal Law since 1995, and serves as a member of the Criminal Justice Act panel of the U.S. District Court, Central District of California.

“I practice in both state and federal court and I am aware of the differences in each venue, and the best practice strategies in each,” he says, adding that he would bring that unique insight to the SFVBA Board.

Eisner would work towards establishing quarterly MCLE programs to mentor young lawyers on courtroom procedure and advocacy, and I would engage judges and prosecutors to participate on topics that could include recent changes in legislation; sentencing mitigation and alternatives to prison; how to best protect your client’s immigration rights; the effective use of experts in criminal defense; and juvenile defense practice.

I hope to make the SFVBA even a more vibrant, “go to” bar association in our community, attracting more members, younger members, and connecting the association with the non-legal community.”



## ANTHONY ELLIS



**LAW SCHOOL:** Pepperdine School of Law

**AREA(S) OF PRACTICE:** Personal Injury Litigation, Products and Premises Liability

**YEARS IN PRACTICE:** 3

**SFVBA MEMBER SINCE:** 2017

**OFFICE LOCATION:** Sherman Oaks

**MOST MEMORABLE TIME IN HIGH SCHOOL?**

"Helping my 10<sup>th</sup> Grade teacher. It was her first year as a teacher and the class was giving her a pretty hard time."

**WHAT'S YOUR FAVORITE LEGAL FILM?**

"Philadelphia with Tom Hanks."

**FAVORITE SPECTATOR SPORT?**

"Mixed martial arts."

**YOUR FIRST CAR?** "A 1990 Mitsubishi Galant."

A member of the Consumer Attorneys of California, the Consumer Attorneys of Los Angeles and the American Association for Justice, Anthony Ellis serves on the SFVBA's Inclusion & Diversity Committee and participates regularly in the Valley Bar Network.

"Now that I've started my own firm in the Valley, I would like to be much more involved in the SFVBA and be a part of its continued success and growth."

Ellis is a contributor to *Valley Lawyer* magazine and volunteers time to Los Angeles Trial Lawyers events while mentoring several law students through Pepperdine Law School's Preceptor Program.

"I grew up in the Valley and many of my friends and family have become lawyers, business owners, doctors and other professionals," he says. "I have a large network of attorneys, experts and vendors that love to be involved in good causes. My network and marketing and sales background would be a great asset to the SFVBA as the organization strives to continue its growth in members, reach, brand and services."

Solo practitioners in the Valley, he says, form a group "that needs support and are looking for an association to be a part of that can provide support, guidance and networking. I want the SFVBA to be the association they, and new attorneys, look to."

## KYLE M. ELLIS



**LAW SCHOOL:** Fordham University School of Law

**AREA(S) OF PRACTICE:** Civil Litigation

**YEARS IN PRACTICE:** 3

**SFVBA MEMBER SINCE:** 2016

**WHAT WAS YOUR CHILDHOOD CAREER GOAL?**

"University Teacher."

**WHY YOUR PARTICULAR AREA OF LEGAL**

**PRACTICE?** "I love doing research. Very happy with it."

**WHAT DO YOU DO IN YOUR FREE TIME?**

"Swimming, spending time with my family, gardening, traveling."

**FAVORITE VACATION PLACE:** "Japan."

Board incumbent Kyle Ellis has taken an active role in the SFVBA, all while working as a research attorney with the Los Angeles Superior Court.

Earlier this year, Ellis was instrumental in organizing the SFVBA's highly-successful Candidates Forum, which gave the public the opportunity to appraise the candidates running for the District 12 seat on the Los Angeles City Council. He also serves on the Bar's Membership & Marketing Committee.

Born and raised in San Diego, and before attending Fordham Law School in New York, Ellis received his undergraduate degree in History from the University of California, San Diego and a Master's in the History of Science from Oregon State University.

Prior to his move back to California, he worked at several law firms in New York, served on the New York City Bar Association's Special Committee on Drugs and the Law, and received Fordham Law's Archibald R. Murray Public Service Award.

"My first goal is to continue to work on the 2020 Mock Trial Competition and see it successfully completed," he says.

Other goals for the Bar include "setting up an online store for the purchase of SFVBA- and ARS-related theme items; setting up a working group to work directly with local elected officials to promote the clear and concise drafting of new laws; and organizing a committee dedicated to assisting the public in the selection of judicial candidates during elections."

## GARY J. GOODSTEIN



**LAW SCHOOL:** Loyola Law School

**AREA(S) OF PRACTICE:** Business and Real Estate Litigation, and Insurance Coverage

**YEARS IN PRACTICE:** 26

**SFVBA MEMBER SINCE:** 2016

**FIRST AIRPLANE FLIGHT:** “From NY to LA at the age of two when my family came west from the East Coast.”

**YOUR FAVORITE SUBJECT IN HIGH SCHOOL?** “English Literature.”

**IF NOT THE LAW, WHAT WOULD BE YOUR SECOND CAREER CHOICE?** “A ski instructor or ski patrolman.”

**WHAT BOOK ARE YOU CURRENTLY READING?** “*The 12 Rules for Life: An Antedote for Chaos* by Jordan Peterson.”

Gary Goodstein is running for a second term on the SFVBA Board of Trustees.

An active member of the Valley Bar Network, he has served with the Los Angeles County Bar Association (LACBA) in a number of positions including Co-Chair of its Membership and Legislation Committees and delegate to its Conference of California Bar Associations.

A 2017-2018 delegate to the Conference of California Bar Associations, Goodstein is admitted to practice before the U.S. Supreme Court, the U.S. Ninth Circuit Court of Appeals, and the U.S. District Courts for the Central, Northern, Eastern and Southern Districts of California.

A self-described “creative problem solver and an experienced fundraiser,” Goodstein says his “strong organizational, verbal and written communication skills, extensive experience, a strong work ethic and a positive outlook” are exhibited in his helping organize meaningful MCLE programs.”

His primary goal as a board member “would be to maximize the tangible value of SFVBA membership to its members through the delivery of programs and services.”

The SFVBA, he says, “must continue to focus on programming and member benefits, and must improve its outreach to younger practitioners who may believe the internet and social media can substitute for the educational and professional development opportunities the SFVBA offers.”

## ALEXANDER S. KASENDORF



**LAW SCHOOL:** Villanova School of Law

**AREA(S) OF PRACTICE:** Business, Real Estate and Government Affairs

**YEARS IN PRACTICE:** 18

**SFVBA MEMBER SINCE:** 2018

**OFFICE LOCATION:** Encino

**WHAT IS YOUR PROUDEST PROFESSIONAL MOMENT?** “Winning the Trusted Advisors Award from the *San Fernando Valley Business Journal*.”

**YOUR FAVORITE SUBJECT IN HIGH SCHOOL?** “American history.”

**WHAT IS YOUR FAVORITE STATE TO VISIT?** “Massachusetts.”

**WHAT WAS YOUR MOST DARING ACTIVITY?** “Riding the Incredicoaster at Disney’s California Adventure.”

For the past ten years, Alexander Kasendorf has practiced with the Encino law firm of Alpert, Barr & Grant focusing on litigation, advocacy, dispute resolution, and lobbying.

Kasendorf graduated from the University of Massachusetts with a degree in Sports Management.

While in law school, he was a quarter-finalist in both the Tulane University School of Law Sports Law Moot Court Competition and the Villanova University School of Law’s Moot Court Competition.

Admitted to practice before the U.S. District Courts for the Central, Northern, Eastern and Southern Districts of California, he currently serves Secretary of the Valley Traffic Advisory Council, and as Treasurer of the Valley Industry & Commerce Association.

Kasendorf serves as the Treasurer of the Valley Industry & Commerce Association and, in 2017, was honored with the *San Fernando Valley Business Journal*’s Attorney of the Year Award, which also presented him with its Community Service Award.

“I have a broad-based knowledge of the law, our community, and the issues that face us,” says Kasendorf. “My goal for the SFVBA would be working toward improving practices to attract greater membership, fostering the development of mediation and low-cost attorney programs and services.”



## MINYONG LEE



**LAW SCHOOL:** Pepperdine University School of Law

**AREA(S) OF PRACTICE:** Family Law, Juvenile Dependency

**YEARS IN PRACTICE:** 11

**SFVBA MEMBER SINCE:** 2017

**OFFICE LOCATION:** Pacoima

**IF NOT THE LAW, WHAT WOULD BE YOUR SECOND CAREER CHOICE?** “Social work or some area of public policy.”

**WHAT IS YOUR FAVORITE BOOK?** “*Just Mercy* by Bryan Stevenson. It’s a moving work about the injustices in our country’s juvenile legal system.”

**YOUR FAVORITE SUBJECT IN HIGH SCHOOL?** “English.”

**WHY YOUR PARTICULAR AREA OF LEGAL PRACTICE?** “I made a decision in law school to help the disenfranchised. I fell into it and I love being able to offer relief to people at times of crisis.”

Minyong Lee spent her formative years in Michigan and Seoul, South Korea, before moving with her family to Porter Ranch. Completing her undergraduate work at Berkeley, she graduated from Pepperdine Law School, the first lawyer in her family of dentists.

Working with Neighborhood Legal Services of Los Angeles, Lee “deeply respects all those who are practicing in the area to service the community and I believe that I can use my experiences to positively impact the work that the SFVBA does.”

Lee feels that her work with NLSLA gives her “a unique perspective on what kind of legal services that need to be provided to the Valley’s most needy and indigent residents.”

A regular participant in SFVBA’s Family Law Section seminars, Lee attended the Judges’ Night event earlier this year and came away with the impression that the Bar “needs to build even more on the positive relationships the Association has with the bench officers.”

The SFVBA, Lee says, “is making changes to keep in step with all the changes that are happening in the legal community. I would like to see fresh updates being added to help people connect with the SFVBA in a meaningful way.”

## JOY KRAFT MILES



**LAW SCHOOL:** Southwestern School of Law

**AREA(S) OF PRACTICE:** Family Law and Estate Planning

**YEARS IN PRACTICE:** 5

**SFVBA MEMBER SINCE:** 2013

**OFFICE LOCATION:** Woodland Hills

**FIRST AIRPLANE TRIP?** “From New York to Florida at the age of two-and-a-half.”

**WHAT IS YOUR PROUDEST PROFESSIONAL MOMENT?** “Completing a trial within days of being sworn in as an attorney and invalidating an unconscionable prenuptial agreement.”

**AWARDS OR DISTINCTIONS?** “Being named the Outstanding Freshman in the University Scholars program at California State University, Long Beach.”

**YOUR FAVORITE VALLEY RESTAURANT?** “Dinner Saddlepeak Lodge in Calabasas; Roll Roll for sushi in Tarzana.”

Miles earned her Master’s of Education degree from UCLA, and a Bachelor of Arts degree from California State University, Long Beach. Before attending law school, she taught high school history and art history in the Los Angeles Unified School District for 11 years.

Miles is currently president of Kraft Miles, ALC and, prior to acquiring that firm, was a partner of Kraft, Miles & Miller, LLP with attorneys Marcia L. Kraft—her mother—and Lawrence Miller, where she practiced family law, employment law, and estate planning. Miles aims to keep her mother’s legacy alive through legal philanthropic work to the San Fernando Valley community.

Claiming a “strong commitment to legal education for those less fortunate,” she has significant experience as both a mediator and litigator with a focus on complex divorce and family law matters.

Married with two children, Miles she has been active in the Valley Community Legal Foundation—the SFVBA’s philanthropic arm—for several years.

As an SFVBA Trustee, she would bring to the Board “a commitment to build better access to legal education for those less fortunate” and seek “better and more prominent community recognition of the Bar for its philanthropic and social justice goals.”

## DARREN Le MONTREE



**LAW SCHOOL:** Southwestern University School of Law

**AREA(S) OF PRACTICE:** Insurance Coverage, Real Estate and Business Litigation

**YEARS IN PRACTICE:** 20

**SFVBA MEMBER SINCE:** 2018

**OFFICE LOCATION:** Woodland Hills

**WHAT IS YOUR FAVORITE CUISINE?**  
“Mediterranean.”

**WHAT WAS YOUR CHILDHOOD CAREER GOAL?**  
“To be a lawyer.”

**WHY YOUR PARTICULAR AREA OF LEGAL PRACTICE?** “Insurance coverage issues are like a puzzle that requires creative thinking and tenacity to unravel and I enjoy the challenge and novelty that this area of practice provides.”

**WHAT DO YOU DO IN YOUR FREE TIME?** “Spend time with my family, swimming, and enjoying Marvel films with our daughter.”

Darren Le Montree received his undergraduate degree in Political Science from UCLA before earning his law degree *cum laude* from Southwestern Law School.

An active member of the Bar’s Attorney Referral Service and regular participant in the Law Day Lawyers in the Library event, he feels his legal skills revolve around “problem solving and creative collaboration.”

A seat on the Board of Trustees, Le Montree says, would give him the opportunity “to find ways to encourage more attorneys to participate and contribute to the SFVBA and its programs and help facilitate access to legal services.”

As a lifelong resident of the Valley, “I have a strong sense of the diverse and rich backgrounds among its constituents. The region has a deep well of resources within our legal community.”

There are, he adds, “Ever-evolving ways to enrich our connections and foster the development of opportunities for SFVBA members, help educate and enhance the public’s access to our attorneys.”

In addition to his membership in the SFVBA, Le Montree is also active in the Los Angeles County Bar Association and the Beverly Hills Bar Association.

## NANCY REINHARDT



**LAW SCHOOL:** University of San Diego School of Law

**AREA(S) OF PRACTICE:** Probate, Estate Planning, Trust Administration

**YEARS IN PRACTICE:** 29

**SFVBA MEMBER SINCE:** 2000

**OFFICE LOCATION:** Encino

**WHY YOUR PARTICULAR AREA OF LEGAL PRACTICE?** “Gives me an opportunity to problem solve and interact when they need help the most.”

**IF NOT THE LAW, WHAT WOULD BE YOUR SECOND CAREER CHOICE?** “A baker.”

**WHAT BOOK ARE YOU CURRENTLY READING?**  
“Reading John Grisham’s, *The Litigators*. Waiting on *The Perfect Alibi* by Philip Margolin to come out in paperback in October.”

**YOUR FAVORITE CUISINE?**  
“Hands down...Mexican.”

A self-described “people person,” Reinhardt says she “always knew” she wanted to be a lawyer. “I like problem solving. It was one of those things, but I always just knew that I’d be making the law my career.”

Becoming a lawyer, she says, “gave me an unequalled opportunity to become involved with people and help them find solutions to their problems at challenging times in their lives. That’s very, very rewarding.”

“I have fostered a lot of great relationships during my time in the Valley and hope to encourage more of those individuals to join our organization or partner with us in ways that help grow our membership.”

One way, she says, is to “expand access to low income and pro bono programs, and implement a mock trial program coordinated with our local high schools.”

Co-Chair of SFVBA’s Probate Section, she also serves as a member of the Probate Settlement Committee, and is also a member of both the San Fernando Valley Estate Planning Council and the Woodland Hills Tax and Estate Planning Council.

“I am very committed to the SFVBA and dearly love our section and I am open to exploring new opportunities and ideas to spotlight our group.”



## GEORGE N. SEIDE



**LAW SCHOOL:** University of La Verne School of Law

**AREA(S) OF PRACTICE:** Family Law

**YEARS IN PRACTICE:** 27

**SFVBA MEMBER SINCE:** 2001

**OFFICE LOCATION:** Calabasas

**WHAT'S YOUR FAVORITE VALLEY RESTAURANT?**  
"Maria's Italian Kitchen"

**WHAT INFLUENCED YOU TO BECOME AN ATTORNEY?** "My father's untimely death and the very complicated issues caused by him passing intestate. I then recognized how important and useful the legal profession was in helping people."

**YOUR FIRST CAR?** "A several year old red Sunbeam Alpine two seat roadster."

**YOUR FIRST 'REAL' JOB?** "My parents signed for a youth work permit and at age 14 I went to work at an A&P grocery store as a bag boy."

As a senior at the University of Florida, Seide served as a uniformed Deputy Sheriff, the Juvenile Section Supervisor and as the Sheriff's Director of Planning and Research.

That experience led him to make the "logical and easy choice" of focusing on family law after coming west and graduating from law school.

A sole practitioner in Calabasas, Seide has been involved in a number of activities, including service on the Executive Committees of the Association of Certified Family Law Specialists, the Family Law Section of the California State Bar as Chair and as Chair of the Counsel of Sections, the Bar Board of Governor's Task Force on Sections, and member of the SFVBA's Family Law Executive Committee for the past 13 years.

A Certified Family Law Specialist, he currently serves as a SFVBA Trustee, a volunteer family law mediator in Van Nuys Superior Court, and, in the past, as a volunteer daily settlement officer with the Superior Court's Central District.

Seide's community volunteer work also includes providing pro bono legal assistance to low income family law litigants and volunteer mentor attorney through the Harriett Buhai Family Law Center.

"I feel the SFVBA should hold the line on costs, enhance the delivery of educational programs and expand membership perks through vendors."

# How to retain your Top Performers

CALL

**CorpStrat**

One of Southern  
California's largest  
insurance brokers

INTRODUCING

## Life Comp™

Tax-favored unique strategies to  
**attract, reward and retain**  
your most valuable employees



- **Recruit, Retain, Reward**
- **Build supplemental retirement income**
- **Restrict access (Golden Handcuffs)**
- **Various balance sheet options**
- **Full administration**

Contact me to have a unique conversation about how companies "lock-up" their most important key performers.

**Martin Levy, CLU/RHU**  
**marty@CorpStrat.com**  
**818.377.7260 Office**  
**www.CorpStrat.com**



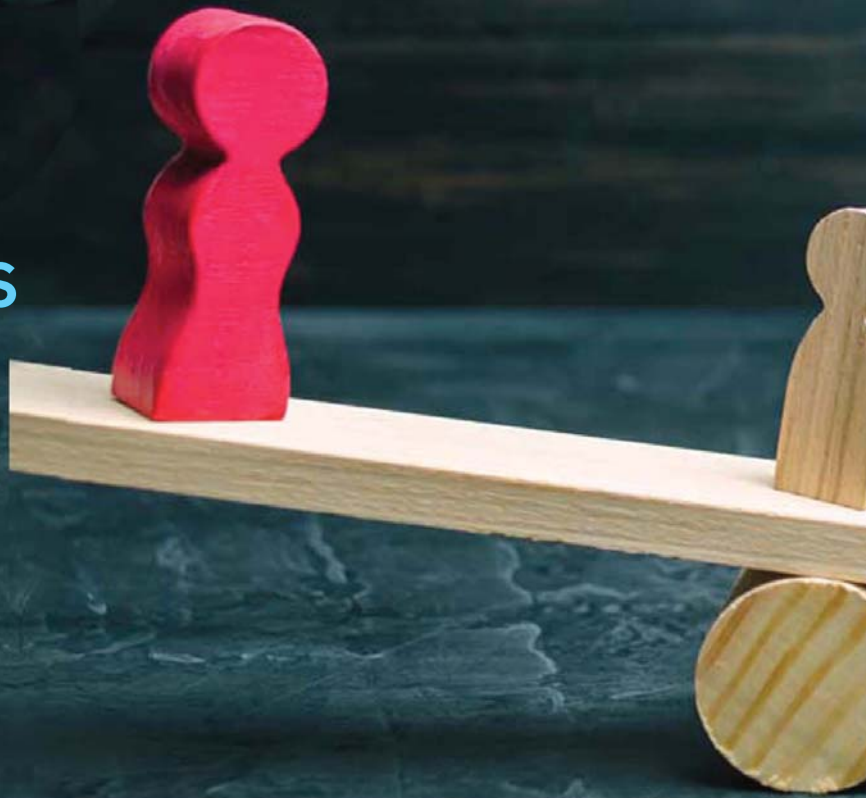
# CorpStrat

INSURANCE • EMPLOYEE BENEFITS • HR • PAYROLL

CA Lic. #0655793

# Weapons of Mass Destruction

By Ilene B. Fletcher



**W**EAPONS OF MASS DESTRUCTION ARE NOT confined to the needs of the military. They can come in the form of the court orders issued after allegations of domestic violence, sexual abuse, neglect, addiction, or mental health issues are made in family court. These temporary court orders usually preclude the accused parent from having physical custody of the children involved.

These orders may allow a parent and a child to see each other only under the watchful eyes of a professional monitor, while the case is processed and until a final judgment has been issued.

Whether the allegations prove to be true or false, a parent who finds themselves separated from their children and only allowed supervised visitation, can cause the family members to spiral into a tragedy so big that it can feel like an emotional bomb detonated. There can be financial, legal, and psychological consequences that affect everyone, including the extended family.

These cases can often deteriorate for a variety of reasons. For example, court orders for visitation are not detailed and are not specific to the family dynamics of that particular case. Another issue can be the hiring of a monitor who lacks enough training or experience to effectively handle the case. Finally, there are parents who want to use monitoring as an opportunity to punish the “bad” parent and end up punishing the children

as a result. All of these reasons can cause an already emotionally charged situation to deteriorate.

Many times, families that are seeking legal counsel may not initially be able to disclose important details to the attorney because of the intense trauma they are dealing with. Since the temporary visitation orders are usually issued by the court very early in the process (often as the very first step), it is incumbent on family law attorneys to know the case thoroughly prior to appearing before the Court to obtain the correct visitation orders.

It is also requisite for attorneys to understand what types of visitation orders are going to work for the dynamics of a particular family. Ineffective court orders can range from those that provide minimum visitation (one hour, for example) or infrequent visitation opportunities (once per month, for example), to orders that do not take into account the children’s activities or the work schedules of the parents.

On the other hand, orders that are too specific in their times and days can also create difficulties for the parents, the children, and the monitors.

Another recipe for disaster is the hiring of a professional monitor who lacks the sufficient training or experience specific to the needs of the family. There are the non-professional visitation monitors—for example, friends or family members—who have no training or direction about



**Ilene B. Fletcher** is a professional monitor with over 30 years of experience. Her company, Family Visitation Services, provides professional monitors for supervised visitation. She can be reached at [info@familyvisitationservices.com](mailto:info@familyvisitationservices.com).





what their actual role is. Even worse than unworkable court orders are those high conflict-type parents who are willing to harm the children as part of their vengeful “nuclear” approach to Family Court.

It is also not unheard of to have a custodial parent want to instruct the monitor concerning the perceived evils of the non-custodial parent; they often seek the endorsement of the monitor—something that runs contrary to the acceptable position of a monitor as a neutral third party.

Non-custodial parents often have no concept of what they have done to harm the children or the other parent and, often, will continue to practice harmful, divisive behavior, even during a visitation.

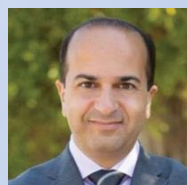
Custodial parents sometimes can use the court to victimize the non-custodial party by trying to alienate the children from the non-custodial parent. A good professional monitor can redirect this parent and is prepared to stop the visitation should the non-custodial parent not follow the rules for visitation.

In addition, a good monitor can accurately convey to the court what is actually going on within the dynamics of a particular family by submitting detailed reports of every visit to assist the judge in making the best decision for the family. Reports that come from inexperienced or incompetent monitors can be devastating to the non-custodial parent, especially when taken out of context.

Some parents are so traumatized and are dealing with grief and loss over the lack of contact with their children and with the stress of the court process, that they can barely continue. These feelings sometimes affect how they behave during visitations. There are an abundance of anecdotes detailing the devastating harm that parental separation does



## INSURANCE AND RETIREMENT PLANS FOR LAWYERS AND LAW FIRMS



**PEYMAN COHAN, ESQ**

**License # 0F47171**

[Peyman@cohan-horn.com](mailto:Peyman@cohan-horn.com)

(323) 708-0072



**JOHN HORN, ESQ MBA CFP**

**License # 0I25017**

[John@cohan-horn.com](mailto:John@cohan-horn.com)

(818) 802-5895

DELIVERING  
VALUE



**Jenny Chen, Partner**

Specializes in serving law firms and other professional services

- \* Attestation/Accounting
- \* Tax Planning and Compliance (Multi-State, International)
- \* Audits of Employee Benefit Plans
- \* Tax Credits and Incentives
- \* Controllship
- \* Business Valuation
- \* Estate and Trust Planning
- \* IT Systems Review and Consulting



HUTCHINSON AND BLOODGOOD LLP  
Certified Public Accountants and Consultants  
550 N. Brand Blvd., 14th Floor Glendale, CA 91203  
t 818.637.5000 [www.hbllp.com](http://www.hbllp.com)

## Hot Writs & Cool Appeals

### Herb Fox, Esq.

Certified Appellate Law Specialist\*  
A Full Service Appellate Boutique



**Former Research Attorney, State  
Court of Appeal**

**29 Years Experience**

**250+ Appeals and Writs of  
Record**

**Appeals and Writs**

**Petitions for Review and Certiorari**

**Post-Trial and Anti-SLAPP Motions**

**Appellate Opinion Letters**

**Pre-Trial, Trial, and Post-Trial  
Consultations**

**310.284.3184**

**HFox@FoxAppeals.com**

**www.FoxAppeals.com**

Hourly, Flat and Contingency Fees Considered  
Referral Fees Paid in Accordance with State  
Bar Requirements

*Southern California Appellate Superlawyer®*  
*AV® Rated / AVVO® Rating 10*

*\*Board of Legal Specialization, Cal. State Bar*

to children, as well as to the parents; this devastation can result in serious societal harm.

In every case, all the monitor can do is report and document for the court what they observe on the visit; they do not act as child custody evaluators or therapists, even if they have that training.

While the monitor does have the latitude to stop a visitation to protect the children from harm, most of the time they are only recording what is happening for the attorneys and the court.

In California, monitors are governed by specific state regulations, and, depending on the county, local rules may also apply.<sup>1 2</sup>


According to the Department of Family Services 2017 data snapshot, there are approximately 30,000 children in foster care, in Los Angeles County alone. That is a small town of children separated from their primary attachment figures. According to the Judicial Council of California, there were over 43,000 dependency and over 35,000 juvenile delinquency cases filed in 2017.<sup>3</sup>

Marital filings—dissolutions, legal separations and nullities—accounted for 138,520 cases and other family law issues such as paternity and child support filings totaled 249,329 cases. That is approximately half a million cases involving families and children filed per year in California.

According to the study, only about 2,000 judges or judge fill-ins oversee these cases, and there are no requirements for judges to have family law training or fully understand monitoring. These orders can be made without the judge even being aware of how their orders affect the family due to a lack of information available to them.

Furthermore, these orders also do not always take into consideration the children's ages, developmental needs, or the relationship with the non-custodial party before supervised visitation began. A mindful, child-centered approach is the best method to minimize the damages to families.

These numerical statistics unfortunately do not quantify how many children are involved in family law matters, and who are subject to crossing over into dependency or delinquency cases.

Who really wins in visitation depends on the thoroughness of the attorneys, the court, and the professional monitor. Visitation monitors, mental health professionals, judges, and attorneys need to work together to create more mindful court orders. Better-drafted orders will reduce stress on the court system and on the families affected. Working together in a mindful way can create a winning situation for all parties. 

<sup>1</sup> Family Code § 3200.5.

<sup>2</sup> California Rules of Court Standard 5.20 Uniform Standards of Practice for Monitors.

<sup>3</sup> 2017 Judicial Counsel of California's Statistics Report.



# Member Focus



Without its individual members no organization can function. Each of the San Fernando Valley Bar Association's 2,000-plus members is a critical component that makes the Bar one of the most highly respected professional legal groups in the state. Every month, we will introduce various members of the Bar and help put a face on our organization.

## Stephen H. Marcus



**Law School:** Harvard Law School

**Areas of Practice:** Mediation, Arbitration, Business Litigation

**Years of Practice:** 49

**SFVBA Member Since:** 2014

**Office Location:** Valencia

**What was your childhood career goal?** "Attorney."

**What do you do in your free time?** "Senior soccer; social events, travel, recreational reading, playing with grandkids."

**Awards or distinctions?** "Harvard Law Review; Tau Beta Pi (engineering) and Sigma Xi (science) honorary societies; listed in Who's Who in America and related publications."

Marcus graduated from M.I.T. in 1967 with a degree in mechanical engineering and received his J.D. in 1970 from Harvard Law School.

Admitted to the California Bar in 1970, he has practiced in Los Angeles ever since then. Marcus has more than 49 years of experience in handling complex business litigation in trial courts, arbitrations, and appellate courts.

Shifting his focus to ADR, Marcus completed the Mediating the Litigated Case course at Pepperdine, and is on the mediation panels of SFVBA's MediationLA, and the U.S. District and Bankruptcy Courts. He also serves on the arbitration and mediation panels of FINRA, is an arbitrator and on the Board of Trustees for the L.A. County Bar's Attorney-Client Mediation and Arbitration Services.

In addition, Marcus also serves as a Judge Pro Tem of the Los Angeles Superior Court, certified in the traffic, small claims, unlawful detainer, and civil harassment departments.

## David I. Karp



**Law School:** Loyola Law School, Los Angeles

**Area(s) of Practice:** Mediation

**Years in Practice:** 40

**SFVBA Member Since:** Mid-1980s

**Office Location:** Van Nuys

**What's your favorite vacation spot?**

"Cities of the Eastern Seaboard including Washington, D.C. and Philadelphia."

**If not the law, what would be your second career choice?**

"I always wanted to be a jeweler; my grandfather was a diamond wholesaler. Or a symphony conductor."

**What was your favorite childhood television program?**

"Star Trek."

Born in New Jersey, Karp came to L.A. in 1968, where he attended junior high, high school, college and law school.

After passing the Bar in 1979, he worked at several law firms and ended up practicing as a sole practitioner in the Valley. Karp transitioned into a full-time independent mediation practice 15 years ago, focusing on resolving real estate and business disputes. Married nearly 38 years, he and his wife, Geri, have raised two children, one married and one about to be, each with their own careers. Geri and David have one grandchild.

As an adult Scout volunteer, Karp started and led many packs and troops, as well as the SFVBA's successful Law Explorer Post program for two years. David is a 28 year Freemason and a member of Clarence F. Smith Daylight Lodge No. 866, F. & A.M. in Van Nuys.

# Colliding Apps:

## Analyzing Ride-Hailing and Scooter Share Services Injury Laws

By Andrew L. Shapiro



**T**HE GIG ECONOMY IS booming, but, unfortunately California law and court decisions are struggling to keep up.

In Los Angeles, a magnet for millennials pursuing work in the entertainment industry, ride-hailing companies offer the perfect 'side-gig' solution—driving for Uber or Lyft.

Such work provides a desirable option for college and university students, out-of-school adults in need of some extra money, those who find themselves between jobs, and just about anyone who just can't see themselves punching a time clock five days a week. Whatever the motive, driving for these companies can provide an intriguing solution to usually temporary, challenging financial times.

Unfortunately, the glut of these supposed "independent contractors," making money per mile, leads to more cars on the road for more hours per day with resulting increases in traffic and a consonant rise in the number of traffic-related injuries and fatalities.

In fact, according to Forbes, preliminary research indicates ride-hailing activity may contribute to an increase of up to four percent in traffic fatalities each year on a nationwide basis.<sup>1</sup>

### **Scouting, Biking and Crashing**

But ride-hailing isn't the only industry suffering from a lack of state regulation.

E-bike and e-scooter (also known as "stand up" or "kick" scooters) companies such as Lime, Bird, and Razor are also seeing increased business. But like the rideshare

industry, a rise in usage and revenue also translates to a rise in serious injury related incidents.

According to the JAMA Network, two California hospitals alone treated nearly 250 emergency room patients because of standing scooter accidents in a recent one-year period. Keep in mind, the report studied two hospitals out of the more than 400 in California.<sup>2</sup>

Whether it be ride-hailing or e-bike and scooter services, the individuals suffering serious injuries aren't necessarily the drivers or operators, but also include passengers, pedestrians, and others operating conventional motor vehicles.

For instance, there is the case of an individual knocked over by someone zipping along on a sidewalk on a rented scooter, who suffered serious injuries. The scooter operator



**Andrew L. Shapiro** is the Chair of the Personal Injury Practice Group at Lewitt Hackman in Encino. Contact him via [ashapiro@lewitthackman.com](mailto:ashapiro@lewitthackman.com).



fled the scene of the accident, raising compelling legal questions, despite various California regulations already in place which potentially address these issues.

For example, is the scooter operator solely responsible, or is the company that rents the scooters responsible for negligently entrusting the scooter to the operator and/or negligently placing the scooter in a location where it could be operated illegally?

Or, is the company obligated to help track down the scooter renter to hold that individual responsible? Can the incident be considered a hit and run accident? If there is no liability coverage, will a pedestrian's own uninsured motorist insurance provide coverage?

On the other side of the coin, what happens when a scooter-share customer is seriously injured while riding? Can the company renting scooters be held liable?

#### **All Hail California...or Not**

In California, ride-hailing companies like Uber and Lyft are known as Transportation Network Companies (TNCs) and are considered sub-types of charter-party carriers regulated by the California Public Utilities Commission (CPUC).<sup>3</sup>

The state defines TNCs as "companies that provide transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles."<sup>4</sup>

In 2015, the CPUC placed certain insurance requirements into effect for ride-hail companies operating in the state. They mandate certain time periods during which different insurance levels apply:

- **Period One**—This period covers the time when an Uber or Lyft driver has the rideshare web application turned on, but the driver has not yet accepted a ride request from a potential

passenger. The TNC is required to have primary insurance of at least \$50,000 per person for death and personal injury to one person; \$100,000 for death and personal injury per incident; and \$30,000 for property damage.

- **Period Two**—A match between a driver and a passenger has been made via the online rideshare app, and the driver is on the way to the pickup point. During this period, the driver must be covered by primary commercial insurance for \$1 million by the driver's insurance policy, provided the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; or the TNC's insurance policy; or a combination of both the driver and TNC's respective policies.
- **Period Three**—This period covers the time a ride-hailing passenger enters the vehicle, through the time the passenger exits the vehicle. Insurance requirements include all of those carried during Period Two, plus uninsured and underinsured motorist policy minimums of \$1 million. Again, the policy minimums may be satisfied through combined TNC and driver policies.

However, the State of California does not require automobile insurance for individuals operating e-scooters, or the companies that provide sharing services for the devices. The state also doesn't require registrations or license plates. Some cities are requiring scooter companies to provide a commercial general liability policy, but not necessarily a policy that will cover the operators of their scooters.<sup>5</sup>

The Department of Motor Vehicles (DMV) does regulate e-scooter operation to some extent, however.<sup>6</sup>

According to the DMV, "A motorized scooter may be operated



[FlagshipEscrow.com](http://FlagshipEscrow.com)

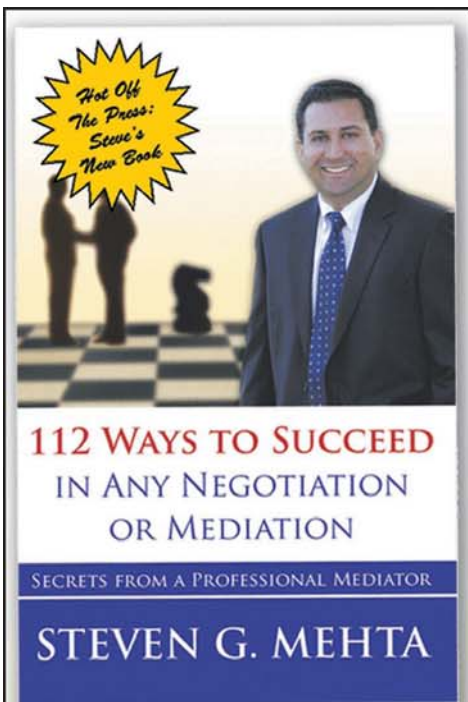
*Official Sponsor of the SFVBA  
Probate & Estate Planning Section*

**We are an  
independent,  
full-service  
escrow company  
with years of  
experience  
in probate,  
trust sale and  
conservatorship  
transactions,  
along with all  
other types  
of escrows.**

**MARGARITA F. BILLINGS**  
Certified Escrow Officer  
[Margarita@FlagshipEscrow.com](mailto:Margarita@FlagshipEscrow.com)

**ENID TOBIAS**  
Certified Escrow Officer  
[Enid@FlagshipEscrow.com](mailto:Enid@FlagshipEscrow.com)

16101 Ventura Boulevard, Suite 324  
Encino, CA 91436  
PH # 818 990 3565



**Steven G. Mehta** is one of California's premier, award-winning attorney mediators, specializing in intensely-difficult and emotionally-charged cases.

Steve's book, **112 Ways to Succeed in Any Negotiation or Mediation**, will turbo-charge your negotiation skills regardless of your experience.

To schedule your mediation or order a copy of Steve's new book, call **661.284.1818** or check with your local bookseller, preferred online retailer, or online at:  
**[www.112ways.com](http://www.112ways.com) or [www.stevemehta.com](http://www.stevemehta.com)**

Locations in Los Angeles & Valencia  
***Mediations throughout California***

on a bicycle path, trail or bikeway, but not on a sidewalk."

Further, an individual "shall not operate a motorized scooter without wearing a properly fitted and fastened bicycle helmet, if they are under age 18, unless it is equipped with a brake that will enable the operator to make a braked wheel skid on dry, level, clean pavement; without a valid driver's license or instruction permit; with any passengers; and while carrying any package, bundle, or article that prevents the operator from keeping at least one hand upon the handlebars.

Finally, operation of a motorized scooter is also prohibited "on the highway with the handlebars raised so that the operator must elevate his or her hands above the level of his or her shoulders in order to grasp the normal steering grip area; and on a highway with a posted speed limit greater than 25 miles per hour (mph) unless it is within a Class II or IV bikeway.

However, a local authority may adopt an ordinance or resolution authorizing operation of a motorized scooter on a highway with a posted speed limit of up to 35 mph."

In addition, many municipalities in California have their own regulations regarding "dockless" scooter and bicycle operation.

For example, last year, the Los Angeles City Council launched a "One Year Dockless On-Demand Personal Mobility Program" that gives companies like Lime and Bird the go-ahead to apply for permits to deploy thousands of stand-up scooters—up to 3,000 per company—while the city decides how kick scooters should be regulated.<sup>7</sup>

Under this program, operators are prohibited from exceeding 15 mph, and are required to park dockless scooters in an upright position on the outer edge of a sidewalk.

#### **Current Dockless Scooter and Ride-Hail Lawsuits**

While the City of Los Angeles' rules

are better late than never, there is already a class action lawsuit filed in a Central District of Los Angeles Superior Court against Bird, Lime, and scooter manufacturers Xiaomi and Segway, among others.

Most of the class plaintiffs were injured when they tripped over scooters improperly left on sidewalks, were riding defective scooters, or while walking they were hit by inattentive scooter operators. There are 15 causes of action citing, among other causes of action, alleged product liability, negligence, negligence per se, gross negligence, breach of implied warranty of fitness for a particular and/or intended purpose, breach of implied warranty of merchantability, public nuisance, and aiding and abetting assaults.

Courts are also beginning to see more lawsuits against ride-hail companies. Because insurance policy limits can reach seven figures if a passenger, pedestrian or other driver is injured by an Uber or Lyft service operator, settlements rather than jury trials are the typical outcome.

The outcome of a recent lawsuit however, should prove very telling as a potential predictor of future claims.

In *Polanco v. Lyft, et al.*, Christopher Jose Solis was driving a pickup that crashed into multiple pedestrians in Fullerton, California, on February 10, 2019. Solis was charged with driving under the influence and failure to stop at the scene of an accident, among other charges.<sup>8</sup>

Plaintiff Sara Polanco was one of the nine pedestrians who was struck and suffered serious injuries, including a shattered pelvis and a lacerated liver. Polanco's lawsuit alleges two Lyft drivers were partially responsible for the accident because, initially, Solis crashed into a Lyft vehicle in the process of picking up passengers.

The driver of that Lyft vehicle was allegedly double-parked while looking up directions on his phone. The second Lyft driver then crashed into



Solis's pickup truck, launching it onto the sidewalk. The lawsuit alleges the second Lyft driver had suddenly stopped to pick up Lyft passengers.


The circumstances around the second collision in the chain of events appear to be less than clear. But if Polanco can prove negligence caused her injuries, she could recover several million dollars from insurers for Lyft and/or its drivers, given the policy limits that would apply under Period Two insurance requirements for TNCs from both Lyft vehicles.

In addition, Polanco would be entitled to recover any additional limits which would apply under Solis's policy.

If Polanco also carried underinsured coverage in an amount greater than all applicable liability policies, she could recover additional damages from her own carrier as well.

### Decoding the Future

Given the motivation for all parties to settle rather than go to trial, and the relatively few years since the birth of ride-hailing and dock-less scooter and bicycle services, relatively little case law has been established. Considering the unsettled nature of the law in this regard, this area will continue to be a fertile ground for personal injury litigation until more definitive guidance is established.

One thing is certain, whatever the state of the law, California citizens need to be effectively protected from private companies that are profiting from their reckless drivers and operators while putting innocent people in harms way. 

<sup>1</sup> Yvkoff, Liane, Updated: Ubers and Lyfts May Increase Road Deaths, Study Claims. <https://www.forbes.com/sites/lianeyvkoff/2018/10/23/ubers-and-lyfts-causecongestion-in-cities-they-may-also-increase-fatalities/#53e83a0d487f>.

<sup>2</sup> Trivedi TK, Liu C, Antonio ALM, et al. Injuries Associated With Standing Electric Scooter Use. JAMA Netw Open. 2019;2(1):e187381. doi:10.1001/jamanetworkopen.2018.7381.

<sup>3</sup> <https://www.cpuc.ca.gov/tncinfo/>.

<sup>4</sup> <https://www.cpuc.ca.gov/General.aspx?id=3802>.

<sup>5</sup> <https://www.dmv.ca.gov/portal/dmv/detail/vr/scooters>.

<sup>6</sup> <https://ladot.lacity.org/what-we-do/dockless-mobility>.

<sup>7</sup> Danielle Borgia et al v. Bird Rides, Inc. et al. (U.S. District Court, Central District of California, Case No. 2:18 CV09685).

<sup>8</sup> Polanco v. Lyft, Inc., et al. (Orange County Superior Court, Case No. 30-2019-01065850-CU-PA-CJC).

# SALLY SOLOMON

## DIVORCE REAL ESTATE EXPERT

Serving Conejo & San Fernando Valleys



- Master Certified Negotiation Expert (MCNE)
- Certified Distress Properties Expert (CDPE)
- Certified Luxury Home Marketing Specialist (CLHMS)
- Certified Divorce Real Estate Expert (CDRE)
- Broker Associate Licensed since 1982
- Five Star Real Estate Agents Award for Highest in Service & Overall Satisfaction 2014, 2015, 2016 & 2018
- Former Legal Assistant & Negotiator

Phone: 805.338.7878

Email: [Sally@SallySolomon.com](mailto:Sally@SallySolomon.com)

Website: [ExpertDivorceRealEstate.com](http://ExpertDivorceRealEstate.com)

DREI #: 00841652

Brokerage/Address:

Keller Williams Realty World Class  
30700 Russel Ranch Rd. Suite 200  
Westlake Village, CA 91362

## INTERESTED IN ADVERTISING IN Valley Lawyer?

*Grow your practice. Promote your service.  
Market your firm.*



VISIT [www.sfvba.org](http://www.sfvba.org) FOR  
THE 2019 MEDIA KIT

CONTACT (818) 227-0497 TO PLACE YOUR AD.

## NEW MEMBERS

The following joined the SFVBA in April and May 2019:

**Andrea Namiko Alexander**  
Studio City  
Family Law

**Brian Brumfield**  
Brumfield & Nelms  
Los Angeles  
Business Law

**Carlo Brooks**  
Canoga Park  
Immigration and Naturalization

**Michael A. Campion**  
Compex Legal Services  
Torrance  
Administrative

**Myanna Dellinger**  
University of South Dakota  
School of Law  
Los Angeles  
Business Law

**William Dietz, Jr.**  
Lake Balboa  
Law Student

**Linda K. Ford**  
Camarillo  
Elder Law

**LaTosha Janelle Hall**  
Sherman Oaks  
Family Law

**Arman Matevosyan**  
Shenon Law Group, APC  
Sherman Oaks  
Litigation

**Steven Matossian**  
Sherman Oaks  
Family Law

**Hugh Meyer**  
Charlesworth and Rugg  
Los Angeles  
Banking and Finance

**Mike Montoleone**  
RE/MAX Olson  
Woodland Hills  
Real Property

**Christian Ighegha Oronsaye**  
Stonecroft Attorneys, APC  
Van Nuys  
Labor and Employment Law

**Richard A. Patterson**  
Owen, Patterson & Owen  
Valencia  
Personal Injury

**Stephen M. Riley**  
Shenon Law Group, APC  
Sherman Oaks  
Litigation

**Boris K Sargsyan**  
Woodland Hills  
Law Student

**Felicia Williams**  
Lancaster  
Law Student

## REPORT OF THE NOMINATING COMMITTEE

**Date:** June 10, 2019

The initial meeting of the Nominating Committee was held on May 30, 2019. Chair of the Committee and Past President Alan E. Kassan called the meeting to order at 8:25 a.m. Steven Mayer was elected to serve as Secretary of the Committee.

Present, in person, were Heather Glick-Atalla, Barry P. Goldberg, Alan E. Kassan, Yi Sun Kim, Steven M. Mayer, and Rosie Soto Cohen. Steve Sepassi and Toni Vargas participated via telephone. Kira S. Masteller was absent.

The second meeting of the Nominating Committee was held on June 10, 2019. Alan E. Kassan, Chair of the Committee, called the meeting to order at 12:25 p.m. Present, in person, were Heather Glick-Atalla, Barry P. Goldberg, Alan E. Kassan, Yi Sun Kim, Steven M. Mayer, Steve Sepassi, Toni Vargas, and Rosie Soto Cohen. Kira S. Masteller was absent.

Following a discussion, the Committee nominated the following for Officers:

Matthew A. Breddan	Treasurer
Christopher P. Warne	Secretary
David G. Jones	President Elect
Barry P. Goldberg	President (automatic)

The following incumbent Trustees who desired to be nominated to run again were approved by unanimous vote:

Kyle M. Ellis	Alexander S. Kasendorf
Gary J. Goodstein	George N. Seide

The Committee considered nine new applicants. Following a discussion, the following seven members, who submitted applications for nomination to run for Trustee, and who were confirmed to be in good standing at the time the application period closed, were approved by unanimous vote:

Alan Eisner	Nancy Reinhardt
Michael L. Cohen	Minyong Lee
Joy Kraft Miles	Darren Le Montree
Anthony Ellis	

The meeting adjourned at 1:25 p.m.

*Steven M. Mayer*

Nominating Committee Secretary

*Alan E. Kassan*

Nominating Committee Chair

### SFVBA Inclusion & Diversity and Membership & Marketing Committees

## DINNER AT MY PLACE

*A member benefit to help members get to know each other in an intimate setting, spur referrals, and become more involved with the SFVBA!*

**July 25, 2019**

**6:30 PM • Calabasas**



**The cost is just \$25 to attend one dinner.**



# Membership Appreciation Party & ART SHOW

PHOTO GALLERY  
FRIDAY  
JUNE 14, 2019





# Referring the Best Attorneys Since 1948

The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

## Programs

- Senior Citizen Legal Services
- Modest Means Program
- Speaker Bureau
- Family Law Limited Scope Representation

**Hablamos Español**



San Fernando Valley Bar Association

**(818) 340-4529**



**[www.SFVBArefferal.com](http://www.SFVBArefferal.com)**



## Meet the New ARS Consultant

### MY NAME IS FAVIANA

Gonzalez. I am a San Fernando Valley native, raised in Northridge by a single mother. We were sometimes forced to move a lot and, as a young child, I travelled to Medellin, Colombia where I attended pre-school before returning to California, the wonderful sunshine state, and city of Northridge.

Again, due to the inevitable obstacles we are all destined to encounter in life, I temporarily moved to Mexico City, where I completed sixth grade and most of seventh. Returning to California, we settled in Encino and enrolled in Sutter Middle School to complete my last and final middle school year.

I am the first of my family to pursue higher education, and attend college. Graduating from High Tech Los Angeles, a small charter school on the campus of Birmingham High School, provided me with an advanced education and technological resources to be successful and explore my educational and career curiosities.

Having educators that included not only our regular teachers, but lawyers, psychologists, basketball team owners, and professors provided me not only with the support I needed to experience success, but examples that pursuing a higher education could create limitless possibilities for me. Their mentoring gave me a hunger for knowledge that I constantly yearn to fuel.

I earned my paralegal certificate from UC Santa Cruz Extension's Center for Legal Studies and plan to transfer from Pierce Community College to California State University, Northridge to complete my bachelor's degree.

Prior to joining the SFVBA staff, I was able to utilize my paralegal certificate and previously acquired customer service skills to work with a sole practitioner. That experience allowed me to not only develop myself professionally, but to navigate a field that I had been long interested in and grow in my knowledge of different legal areas, while allowing me to discover a passion for assisting people.

I believe my passion for helping the general public will be exemplified by the resources and networking provided to me by working at the Bar Association. Ultimately, my long term goal is to attend and complete law school so that I can help not only my family, but the people of my hometown of San Fernando. I want to be a voice to those that are unheard.

With my growing passion for helping people, I have adopted the following motto for my life: Be the change you want to see in the world.

I try to apply this motto to my life by treating others, regardless of their situation with care and love, and by volunteering for several non-profit

**FAVI GONZALEZ**  
ARS Referral Consultant




[favi@sfvba.org](mailto:favi@sfvba.org)

organizations such as Autism Speaks, the Best Friend Animal Society, and the Foster Care Resource Center.

Most recently, I laid the groundwork for a community outreach event in which we fed the local homeless of my community.

Along with family and friends, we prepared more than 75 home-cooked meals during the last Christmas holiday season. We then drove to multiple locations in the Valley that we had learned were heavily impacted with the homeless. My hope is that this outreach can eventually grow so that we can give back more often and in an even bigger way.

Lastly, I would like to thank the wonderful SFVBA leadership and my colleagues for the warm welcome I have received. Rosie, Linda, and Michael, thank you very much for being accessible and kind at all times. Miguel and Sonia, thank you very much for patiently answering all of my questions, sharing your knowledge, and helping make possible my new journey with the San Fernando Valley Bar Association. 

## WORKERS' COMPENSATION STATE CERTIFIED SPECIALIST



**William J. Kropach**  
[william@kropachlaw.com](mailto:william@kropachlaw.com)

*Chairman Workers'  
Comp Section*

*SFVBA 1987-2000*

*Volunteer of the Year  
SFVBA 2003*



LAW OFFICES OF

**KROPACH & KROPACH**

A PROFESSIONAL CORPORATION

*Over 40 years combined experience.*

**REFERRAL FEES PAID—CALL**

**818.609.7005**

[WWW.WILLIAMKROPACH.COM](http://WWW.WILLIAMKROPACH.COM)



**William H. Kropach**  
[whk@kropachlaw.com](mailto:whk@kropachlaw.com)



## VALLEY COMMUNITY LEGAL FOUNDATION OF THE SAN FERNANDO VALLEY BAR ASSOCIATION

### ***Constitution and Me Essay Contest Winners***

#### **MONROE HIGH SCHOOL**

Jienel Valenzuela and Maximilano Jimenez, "Constitution & Me Outstanding Essay Award" (\$400)

Carissa Po and Sundiata "Chaka" Tellem, "Constitution & Me Excellence in Jurisprudence Award" (\$250)

Ally Lorenzo and Cristina Arechiga "Constitution & Me Youth Scholar Award" (\$200)

#### **TAFT HIGH SCHOOL**

Selena Dickson and Taryn Smythe, "Constitution & Me Outstanding Essay Award" (\$400)

Xenia Cornejo and Varya Fayner, "Constitution & Me Excellence in Jurisprudence Award" (\$250)

Victoria Platanova and Alyssa Ochoa, "Constitution & Me Youth Scholar Award" (\$200)

# EDUCATING OUR KIDS BEGINS WITH YOU

Thanks to our dedicated volunteers and generous sponsors for making VCLF's inaugural Spring 2019 presentation of *Constitution and Me* a great success! VCLF's interactive constitutional law program presented high school students with a hypothetical case involving issues of free speech, cyberbullying, and safety in the school environment.

Using actual Supreme Court case summaries, and with the guidance of volunteer judges and attorneys, students at three Valley high schools participated in a spirited debate on the issues during three weekly sessions, culminating in a mock Supreme Court argument.

With continued help from the bench, sponsors, and the bar, this well-received program will resume this Fall.

### **FUNDED BY DONATIONS FROM PEOPLE LIKE YOU**

To donate to the VCLF or to learn more, visit  
**[www.thevclf.org](http://www.thevclf.org)**  
and help us make a difference in our community.

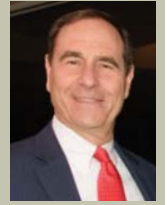




## Kids Say The Smartest Things

**MARK S. SHIPOW**

President



[mshipow@socal.rr.com](mailto:mshipow@socal.rr.com)

**A**S PART OF VCLF'S RECENTLY-COMPLETED high school constitutional law program—*The Constitution & Me: True Threats v. Pure Speech Drawing the Line between Safety and Freedom*—we encouraged students to enter our essay contest. Our Education Committee developed some prompts for the participants and they took it from there in grand style.

The awards were made possible by your generous donations. VCLF—and the students—are very appreciative of your support.

So that you can get a better idea of what you supported, and how impressive these students are, I want to share one of the winning essays with you, from Jienel Valenzuela.

It is entitled *Should the First Amendment be Expanded or Restricted in School Disruption Cases?*

"The freedom of expression is a basic human right that the Founding Fathers made the *First* Amendment of the United States Constitution, which states, 'Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.'

"Through this clause, citizens are assured the right to freedom of expression in the form of oral or written speech and assembly. However, to protect the rights of others and maintain an orderly educational environment, these freedoms are often limited for students.

"These restrictions result when an individual uses expression to infringe on another person's rights. The defamation of one's reputation, acts of obscenity, and criminal threats are not protected under the First Amendment.

"Society has changed immensely, while modern technology has greatly transformed forms of expression and speech from the time of the Constitution's first ratification in 1791.

"In the case of *C.H. and F.L. v. Alta Valley School District, et al.*, the petitioners claimed that the respondent infringed upon their First Amendment rights, saying that they simply used social media as a platform to exercise their basic rights and that their comments were falsely interpreted as serious threats.

"In the ruling of *Elonis v. United States*, an individual named Anthony Douglas Elonis posted graphic and violent rap lyrics on his Facebook page about his ex-wife, his co-workers, a kindergarten class, and law enforcement.

"Threatened by the vulgar language and imagery, the aforementioned brought Elonis to the attention of the law, and he was convicted despite his statements of posting the 'fictitious' lyrics as a 'therapeutic' method of expressing his frustrations, not as threats of violence.

"The Supreme Court, however, overturned Elonis's conviction because a 'wrongdoing must be conscious to be criminal,' and the speech's effect on the listener alone would not be enough to constitute as a criminal threat.

"Furthermore, the Court ruled that the negligence standard was not sufficient enough for conviction.

"In the case of *C.H. and F.L. v. Alta Valley School District, et al.*, the two petitioners were punished because of the casual posts and comments they made on Instagram. Still young and immature, the two did not intend to actually cause harm upon their classmate.

"In order to be convicted of recklessness, one must be found at a subjective state of culpability greater than negligence under the *State of Freedonia Jury Instruction 3113, Recklessness Defined*. They did not wish bodily harm on anyone because of a cheating incident, but they were only annoyed and simply expressed their frustrations online.

"The language, if anything, was merely symbolic. The picture of Brutus stabbing Caesar and the emojis of a knife dripping in blood are simply metaphors of the betrayal from a trusted companion; it was not indicative of an actual threat of physical harm. The petitioner, C. H., even clarified that he was not serious about hurting Shai N. at all.

"However, Shai N.'s parents and other guardians of students at Alta Valley High School chose to keep their children home on their own volition despite a proper investigation.

"This is corroborated in *Virginia v. Black*, which defines true threats as 'those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.'


"Furthermore, the language in the captions and the comments was not specific enough to make a reasonable person feel threatened. The caption simply said that Shai needed to be 'taught a lesson' and he should 'watch out.'

"This does not indicate that the petitioners themselves actually planned to commit bodily harm. There is no 'who,' 'what,' and 'how' to make it a serious threat.

"*The Penal Code of 1787* is, therefore, irrelevant since the 'threat' is not legitimate. Due to the lack of threatening language and a lack of intent, the petitioners' First

Amendment rights were protected, the punishments were not justified and the two students should be allowed to return to school."

This is just one example of how smart and insightful these kids are. And they are only in high school!

VCLF intends to bring this program back to high schools in the upcoming spring semester, including another essay contest. You can help by making a donation, by check, to VCLF, or directly online at [www.thevclf.org](http://www.thevclf.org). Thank you for your support. 

## VCLF CONSTITUTION & ME AND MARCIA KRAFT FOUNDATION SUPPORTERS

**\$1,500**

Kantor & Kantor, LLP

**\$1,000**

Ernest Prete Jr. Foundation

Mohammad Virani

Judge Firdaus Dordi

**\$500**

Lewitt, Hackman, Shapiro, Marshall & Harlan, LLP

Carole Meltzner

The Reape-Rickett Law Firm

Steven Sepassi – Sepassi & Tarighati, LLP

**\$350**

Christy Keeny

**\$250**

Robert J. Carlson, APC

Jamal Deeb – BMA USA, Inc.

Nancy A. Reinhardt

Richard S. Rosenberg – Ballard Rosenberg Golper  
& Savitt, LLP

Rick Stanoff – Country General Store

Wesley Hampton – Narver Insurance

**\$200**

Kira S. Masteller

**\$180**

Laurence N. Kaldor

Jonathan Wershow – Wershow & Cole LLP

**\$100**

Albert Lee – Business Legal Partners

Marc L. Sallus – Oldman, Cooley, Sallus,  
Birnberg & Coleman, LLP

Gerald M. Serlin – Benedon & Serlin, LLP

Alpert Barr & Grant

Kraft Miles, ALC

Kristi Isaac – State Farm Insurance

Marcia W. Wasserman – Comprehensive  
Management Solutions

Marty & Francine Hauptman

Christine C. Lyden – Lyden Law Corp.

Barry L. Pinsky – Pinsky Trust

Marlene S. Seltzer – Gold Law Group

Ellis & Bakh

Robert Goldstein

### ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with the mission to support the legal needs of the Valley's youth, victims of domestic violence, and veterans. The Foundation also provides scholarships to qualified students pursuing legal careers and relies on donations to fund its work. To donate to the Valley Community Legal Foundation or learn more about its work, visit [www.thevclf.org](http://www.thevclf.org).



## Growing By Leaps and Bounds

**I**F YOU DO NOT GET TO THE Santa Clarita Valley often, you might not know that the area is growing by leaps and bounds.

Since 2011, the City of Santa Clarita itself has grown in population by more than 45,000 and the rate of growth is not expected to slow. In fact, more than 45,000 more homes are expected to be built in the area over the next few years.

The Santa Clarita Valley Bar Association expects to keep pace and grow as we look to meet the growing legal needs of an ever-expanding community.

SCVBA is small compared to the San Fernando Valley Bar Association, but the SCVBA has seen growth of more than 17 percent in our membership over the last year. Steps are being taken to ensure that the Association's growth continues with a focus on increasing networking events and MCLE opportunities with a special emphasis on membership development.

For instance, on August 22, 2019, the SCVBA will be hosting attorney Brian

**LUCAS ROWE**  
SCVBA Member-at-Large




[lrowe@donahoeyoung.com](mailto:lrowe@donahoeyoung.com)

E. Koegle of Poole & Shaffery, LLP, who will conduct a training session on sexual harassment prevention in the workplace. Participation in the session will meet the State of California's new sexual harassment prevention training requirements for all businesses with five employees or more.

SCVBA will also host its annual Awards Installation Gala on November 14, 2019 to welcome our new board members and recognize the achievements and contributions to the community of local attorneys. The gala will take place at The Oaks Club at Valencia and we extend a cordial invitation to attend the event to members of the SFVBA.

If you are an attorney residing or practicing in the Santa Clarita Valley, we encourage you to join the SCVBA, attend some of our events, get involved, and expand your network alongside us.

For more information about the SCVBA, please visit our website at [www.scvbar.org](http://www.scvbar.org). 



**VBN**  
VALLEY BAR NETWORK

**VBN is dedicated to offering organized, high quality networking for SFVBA members.**

**Join the Valley Bar Network the first Monday of each month.**

**Contact [events@sfvba.org](mailto:events@sfvba.org) for more information.**

## ERISA LAWYERS

**LONG TERM DISABILITY,  
LONG TERM CARE, HEALTH,  
EATING DISORDER, AND LIFE  
INSURANCE CLAIMS**

**WE HANDLE BOTH  
ERISA & BAD FAITH  
MATTERS**

- California Federal and State Courts
- More than 20 years experience
- Settlements, trials and appeals

**Referral fees as allowed  
by State Bar of California**

**Handling matters  
throughout California**

**818.886.2525**

**KANTOR  
& KANTOR** LLP

[www.kantorlaw.net](http://www.kantorlaw.net)

**Dedicated to helping people  
receive the insurance  
benefits to which they  
are entitled**

## CLASSIFIEDS

### ATTORNEY-TO-ATTORNEY REFERRALS

#### STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

### HELP WANTED LEGAL ASSISTANT

Shulman Family Law Group is seeking a legal assistant with 2-5 years of family law experience organizing and managing documents, calendars, invoices and caseload. We offer competitive salary with excellent benefits. Please email your resume to mshulman@sflg.us.

### LITIGATION ATTORNEY

Nemecek & Cole is seeking candidates with 3 plus years litigation experience to handle professional liability defense claims and insurance coverage. Superior writing skills AND the ability to work independently required. We offer a highly competitive salary commensurate with experience and excellent benefits. Email resume to bcole@nemecek-cole.com.

### SPACE AVAILABLE SHERMAN OAKS

Office building at 14156 Magnolia Blvd. in Sherman Oaks. We have three workstation spaces available measuring 8 by 9.5 ft. Call Eric at (818) 784-8700.

### WOODLAND HILLS

Private Warner Center window office in Woodland Hills, plus second desk and shared reception area/receptionist, conference room and kitchen. Lease for \$699/month. Contact Fran at (818) 867-9134 or fstone@gomezsimonelaw.com.

### SUPPORT SERVICES PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

### FOR SALE

EARLY 1900s mahogany PARTNERS DESK modeled after President Lincoln's Resolute Desk. EXCELLENT CONDITION 72"L x 38"D x 30"H. \$8,999. Email Barbara at bbn4@me.com.

## Legal Document Service

Serving the San Fernando Valley Exclusively  
Los Angeles County Registration #2015229255

### \$65 Flat Rate!

Need documents Served?  
Looking for quality service at  
a competitive rate?



Contact Daniel Kahn  
at 818.312.6747

[www.processserverdanielkahn.com](http://www.processserverdanielkahn.com)

## BURNED BY YOUR STOCKBROKER?

### SECURITIES LAW CLAIMS AGAINST STOCKBROKERS

Stock Market Losses Caused by:

- Excessive Trading in Account
- Unsuitable Investments • Misrepresentation
- Variable Annuities • Breach of Fiduciary Duty
- Reverse Convertible Bonds

### LAW OFFICES OF JONATHAN W. EVANS & ASSOCIATES

43 Years of Experience  
Highest Avvo rating - 10.0 out of 10.0  
FINRA Arbitrator

No Recovery - No Fee  
Free Initial Consultation

Select by peers as  
SECURITIES LITIGATION SUPERLAWYER  
2007-2013 & 2015-2019

Call today for an appointment  
(213)626-1881 • (800)699-1881  
(818)760-9880  
[www.stocklaw.com](http://www.stocklaw.com)

# SFVBA MCLE

## Seminars on Audio

### COULDN'T ATTEND AN IMPORTANT SFVBA SEMINAR?

Most SFVBA  
seminars since 2013  
available on  
audio CD or MP3.

Stay current and  
earn MCLE credit.



## Versatape

### Who is Versatape?

Versatape has been  
recording and marketing  
audio copies of bar association  
educational seminars to  
California attorneys since 1983.

[www.versatape.com](http://www.versatape.com)  
(800) 468-2737





#### **PRESIDENT'S CIRCLE**

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEDICATION TO THE SFVBA AND THE COMMUNITY.

**Alpert Barr & Grant APLC**  
**Brot & Gross LLP**  
**Brutzkus Gubner Rozansky Seror Weber LLP**  
**Goldfarb, Sturman & Averbach**  
**Greenberg & Bass LLP**  
**Kantor & Kantor LLP**  
**Kraft, Miles & Miller LLP**  
**Lewitt Hackman Shapiro Marshall & Harlan ALC**  
**Neighborhood Legal Services of Los Angeles County**  
**Nemecek & Cole**  
**Oldman Cooley Sallus Birnberg & Coleman**  
**Parker Milliken Clark**  
**O'Hara & Samuelian**  
**Pearlman, Brown & Wax LLP**  
**Pearson Simon & Warshaw LLP**  
**Stone | Dean**

- SFVBA membership for every firm attorney and paralegal
- Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website
- Recognition and 5% discount on tables at Bar-wide events, including Judges' Night
- Invitations to President's Circle exclusive events with bench officers, community leaders and large firms

Contact SFVBA Member Services Coordinator Sonia Bernal at (818) 227-0032 or [sonia@sfvba.org](mailto:sonia@sfvba.org) to sign up your firm today!



# LEWITT HACKMAN

LEWITT, HACKMAN, SHAPIRO, MARSHALL & HARLAN  
A LAW CORPORATION



16633 Ventura Boulevard, Eleventh Floor  
Encino, California 91436

[www.lewitthackman.com](http://www.lewitthackman.com)  
818.990.2120